

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEREK J. MYERS, et al.,)	
)	
Plaintiffs,)	
)	Case No.
vs.)	2:23-cv-4102
)	
PIKE COUNTY, et al.,)	
)	
Defendants.)	
)	

Deposition of: DEREK J. MYERS

Pursuant to: Notice

Date and Time: Wednesday, September 18, 2024
12:11 p.m.

Place: Mezibov Butler
615 Elsinore Place
Suite 105
Cincinnati, Ohio 45202

Reporter: Tracy L. Allen, RPR, RMR
Notary Public - State of Ohio

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1 DEREK J. MYERS

2 a plaintiff herein, having been duly sworn, was

3 examined and deposed as follows:

4 EXAMINATION

5 BY MS. SARK:

6 Q. Can you state your name for the

7 record, please?

8 A. I'm Derek Joel Myers.

9 Q. Okay. And are you under the

10 influence of any alcohol, drugs, or medication

11 that may impair your ability to truthfully

12 testify today?

13 A. No.

14 Q. Okay. Have you ever had your

15 deposition taken before?

16 A. I have.

17 Q. Okay. So there's some ground rules

18 that every deposition has.

19 The first being, we want to audibly

20 answer. If you shake your head, it's hard for

21 the court reporter to get a clear record of

22 what's going on.

23 The second thing is, obviously I

24 want to finish my question before you answer.

25 You may think that you know the answer, and

Page 5

1 that is fine, but in order to make it easier on

2 the court reporter, let me finish my question

3 before you answer.

4 If you answer my question, I'm going

5 to assume that you understood it. If you don't

6 understand it, ask me to rephrase it. But if

7 you do answer, I will assume that you knew

8 that.

9 Lastly, if you need a break, that's

10 completely fine. The only thing I ask is that

11 you answer my question that's pending before we

12 take the break.

13 Do you understand those things?

14 A. I understand.

15 Q. Okay. Perfect.

16 What is your date of birth, Derek?

17 A. 5/8/1992.

18 Q. And where do you currently reside?

19 A. 152 East Main Street, Chillicothe,

20 Ohio 45601.

21 Q. Okay. Are you currently married?

22 A. I am not married.

23 Q. Have you ever been married?

24 A. I have not.

25 Q. Okay. Do you have any children?

<p style="text-align: right;">Page 6</p> <p>1 A. I do not.</p> <p>2 Q. Okay. Let's go through some</p> <p>3 educational background.</p> <p>4 Where did you go to high school?</p> <p>5 A. Multiple places.</p> <p>6 Q. Okay.</p> <p>7 A. Miami Trace High School.</p> <p>8 Q. Okay. And where is that located?</p> <p>9 A. Washington Court House, Ohio.</p> <p>10 Q. Okay.</p> <p>11 A. I transferred to Washington Senior</p> <p>12 High School, and that's where I received my</p> <p>13 diploma in 2011.</p> <p>14 Q. Okay. And do you have any education</p> <p>15 beyond high school?</p> <p>16 A. Yes. I have a series of credits</p> <p>17 from multiple universities, but ultimately</p> <p>18 obtained a bachelor's in criminal justice from</p> <p>19 Walden University.</p> <p>20 Q. And where is Walden University at?</p> <p>21 A. I believe they're headquartered in</p> <p>22 Maryland. It is an online institution.</p> <p>23 Q. And what year did you receive your</p> <p>24 bachelor's in criminal justice?</p> <p>25 A. Would have been earlier this year,</p>	<p style="text-align: right;">Page 8</p> <p>1 such as a newspaper, online only?</p> <p>2 A. It was not hard copy.</p> <p>3 Q. Okay. So it was a news source that</p> <p>4 was available online?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And did you report on local</p> <p>7 events, national events?</p> <p>8 A. All -- both.</p> <p>9 Q. Okay. Now, after -- well, let me</p> <p>10 ask this.</p> <p>11 Do you still operate that</p> <p>12 independent organization?</p> <p>13 A. Not that independent organization.</p> <p>14 Q. Okay. So when did Washington</p> <p>15 Blaze -- did it close?</p> <p>16 A. It did. It was never -- it -- let's</p> <p>17 see. 2012 is when it operated. About</p> <p>18 18 months later.</p> <p>19 Q. Okay. Did you have any other</p> <p>20 employees?</p> <p>21 A. I did not.</p> <p>22 Q. So after Washington Blaze stopped</p> <p>23 operating, what did you -- what did you do</p> <p>24 after that?</p> <p>25 A. I had some various odd jobs.</p>
<p style="text-align: right;">Page 7</p> <p>1 so 2024.</p> <p>2 Q. Okay. Now, after -- let's back up.</p> <p>3 After high school in 2011, where did</p> <p>4 you work? What was your first job after high</p> <p>5 school?</p> <p>6 A. I was an internet marketing manager</p> <p>7 for the local Ford dealership in Washington</p> <p>8 Court House.</p> <p>9 Q. Okay. And what were the dates that</p> <p>10 you worked there?</p> <p>11 A. November 2011 for about</p> <p>12 eight months.</p> <p>13 Q. Okay. And then what was your first</p> <p>14 news job, news-related job, I should say?</p> <p>15 A. Sure.</p> <p>16 I had started an independent</p> <p>17 organization called the Washington Blaze in</p> <p>18 2012. And operated that for about 18 months in</p> <p>19 Washington Court House as a local news source.</p> <p>20 Q. Okay. Was that a print news --</p> <p>21 scratch that.</p> <p>22 Was it a news source that was</p> <p>23 printed?</p> <p>24 A. Can you define printed?</p> <p>25 Q. Was it printed hard copy, available</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Okay. Such as?</p> <p>2 A. I was a part-time security guard.</p> <p>3 Q. Okay. And after that?</p> <p>4 A. I believe I may have tried dabbling</p> <p>5 in public relations --</p> <p>6 Q. Okay.</p> <p>7 A. -- as well as property management.</p> <p>8 Q. Now, when you worked in public</p> <p>9 relations, where did you work during that time</p> <p>10 period?</p> <p>11 A. Buffalo, New York.</p> <p>12 Q. Okay. What were you doing?</p> <p>13 A. I was a PR specialist.</p> <p>14 Q. For who?</p> <p>15 A. Farrow PR.</p> <p>16 Q. And what is that?</p> <p>17 A. It's a public relations agency.</p> <p>18 Q. Okay. So -- so what were your job</p> <p>19 duties during that time?</p> <p>20 A. To handle public relations for</p> <p>21 existing clients and to procure new clients.</p> <p>22 Q. Okay. And what type of clientele</p> <p>23 did you have? Was it various organizations or</p> <p>24 individuals?</p> <p>25 A. It was a broad spectrum.</p>

Page 10

1 Q. Okay.

2 A. For the most part, it was

3 individuals.

4 Q. Okay. Now, were these individuals

5 in the political realm?

6 A. I'm unsure of what their backgrounds

7 were.

8 Q. Okay. So after public relations,

9 what did -- in Buffalo, New York, what did you

10 do?

11 A. I wanted to become a television news

12 reporter.

13 Q. Okay.

14 A. So I took a job as a television news

15 reporter in Florida.

16 Q. Okay. What news station did you

17 work for?

18 A. The call letters are WCJB.

19 Q. Does that stand for anything?

20 A. Not to my knowledge.

21 Q. Okay. And you said that was in

22 Florida?

23 A. Yes.

24 Q. Okay. And how long did you work as

25 a -- was it a news anchor position?

Page 11

1 A. No.

2 Q. Okay. What was the position?

3 A. I was the chief bureau reporter, or

4 what's also known as a multimedia journalist,

5 for Marion County, Florida.

6 Q. Okay. And after you finished that

7 job, what was your next job?

8 A. I was the chief investigative

9 reporter at WVLA-TV in Baton Rouge, Louisiana.

10 Q. Okay. And how long were you there?

11 A. Three weeks.

12 Q. And what were your job duties while

13 you were there?

14 A. I was in charge of uncovering

15 political news and as well as investigative

16 news stories.

17 Q. Okay. And after that position?

18 Let me back up. What time frame

19 were you in Georgia?

20 A. I wasn't in Georgia.

21 Q. Oh, I'm sorry. Chief investigator.

22 Where were you when you were the chief

23 investigator?

24 MR. MEZIBOV: Louisiana.

25 BY MS. SARK:

Page 12

1 Q. Louisiana. I apologize.

2 A. Yes, it was in Louisiana.

3 I'm sorry. Can you reask the

4 question?

5 Q. Yes.

6 What year or time frame were you in

7 Louisiana?

8 A. 2015.

9 Q. Okay. So let's kind of speed this

10 up a little bit.

11 When did you become -- when did you

12 start working at Scioto Valley Guardian?

13 A. Scioto Valley Guardian was launched

14 in 2019.

15 Q. And who launched that?

16 A. I did.

17 Q. So at the time that it launched,

18 were you the only individual behind Scioto

19 Valley Guardian?

20 A. I was.

21 Q. Okay. Did it grow after you started

22 it? Meaning, did you have employees that

23 started working for you?

24 A. Yes.

25 Q. Okay. How many employees did you

Page 13

1 have at the -- at its peak?

2 A. I want to estimate seven --

3 Q. Okay.

4 A. -- including myself.

5 Q. And you -- scratch that.

6 Since Scioto Valley Guardian began

7 operating, have you always been the editor in

8 chief?

9 A. Until recently, yes.

10 Q. And what caused that position

11 change?

12 A. I took a dive into politics.

13 Q. Okay. So when did you step away

14 from Scioto Valley Guardian?

15 A. I believe it was October of 2023.

16 Q. Okay. And, at that time, were there

17 still other employees with the Scioto Valley

18 Guardian?

19 A. We had transitioned to 1099

20 contractors.

21 Q. Okay. Is the Scioto Valley Guardian

22 still in operation as of today?

23 A. Yes.

24 Q. Okay. So it's my understanding that

25 you were present at the trial of George

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1 **Wagner, IV; is that correct?**

2 A. Yes.

3 **Q. Were you present on behalf of the**

4 **Scioto Valley Guardian?**

5 A. Yes.

6 **Q. Okay. So I'm going to hand you what**

7 **I've labeled as Exhibit A.**

8 MS. SARK: And since we jumped

9 around on exhibits, number-wise, I

10 just -- oh, sorry. I don't -- I almost

11 handed you my work copy. I just went

12 ahead and used letters since --

13 MR. ROBINSON: Sounds like a good

14 idea.

15 MR. MEZIBOV: You put letters on

16 them?

17 MS. SARK: Yes.

18 MR. MEZIBOV: Can I make a

19 suggestion?

20 I think life is easier if we just

21 use the numbers, but you don't have to

22 call them defense exhibits, just numbers

23 as we use them.

24 I mean, if they're already marked --

25 MS. SARK: Okay.

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1 MR. MEZIBOV: Showing what's been

2 previously marked Exhibit 1. It's less

3 confusion, honestly, for everybody.

4 MS. SARK: Can we go off the record

5 just for a second?

6 (Off the record.)

7 MS. SARK: We can go back on the

8 record.

9 (Deposition Exhibit 20 was marked for

10 identification.)

11 BY MS. SARK:

12 **Q. So I've handed you what's labeled as**

13 **Order Regarding Media Participation And General**

14 **Decorum At All Proceedings, Including But Not**

15 **Limited To Pretrials, Motion Hearings, Voir**

16 **Dire, And/Or Trial; is that correct?**

17 A. Yes.

18 **Q. Okay. And can you tell me what case**

19 **this was filed in?**

20 A. The case number is 2018-CR-000155,

21 State of Ohio versus George Washington Wagner.

22 **Q. And it was filed on July 1st, 2022;**

23 **is that accurate?**

24 A. According to the time stamp here.

25 **Q. Okay. Have you seen this order**

Page 16

1 **prior to today?**

2 A. I have.

3 **Q. Were you present the day the trial**

4 **began?**

5 A. I was.

6 **Q. Do you recall what month that began?**

7 A. I do not.

8 **Q. Did you receive an order -- or**

9 **excuse me.**

10 **Did you receive a copy of this order**

11 **prior to the trial beginning?**

12 A. I did not.

13 **Q. Okay. Did you receive a copy of**

14 **this at all?**

15 A. Could you define receive?

16 **Q. Was -- did you see this order prior**

17 **to Jake Wagner's testimony?**

18 A. Yes.

19 **Q. Do you recall when you saw this**

20 **order?**

21 A. Yes. It was the first day of trial.

22 **Q. Okay. So the first day of trial you**

23 **saw this order, correct?**

24 A. Allow me to rephrase.

25 It was the first day of proceedings

Page 17

1 for the trial.

2 **Q. Okay.**

3 A. Might have been voir dire.

4 **Q. Okay. Did you read this in its**

5 **entirety?**

6 A. I did.

7 **Q. Did you understand it?**

8 A. Yes.

9 **Q. I'm going to have you turn to**

10 **page 3, and it would be paragraph 4.**

11 **Do you care to read that first**

12 **sentence for me out loud?**

13 A. Beginning on July 5th, 2022, all

14 electronic devices, including but not limited

15 to computers, cameras, cell phones, video

16 phones, personal digital assistants, tape

17 recorders or other recording or transmitting

18 devices shall be barred from the courtroom

19 and/or any other facility and/or locations

20 where proceedings in this matter are held,

21 except as provided in this Order.

22 **Q. Okay. Now, I think it actually**

23 **says, shall be barred from the Courthouse,**

24 **correct? Is that correct?**

25 A. I believe I read it as it stated.

<p style="text-align: right;">Page 18</p> <p>1 It does say, device shall be barred from the 2 Courthouse.</p> <p>3 Q. Okay. So you were aware, before the 4 trial began, that electronic devices were not 5 permitted in the courtroom; is that correct?</p> <p>6 A. Not before the trial began.</p> <p>7 Q. Okay. There might be some 8 confusion.</p> <p>9 I thought you said that you received 10 this order on the first day proceedings began 11 for the trial.</p> <p>12 A. Before the gavel hit to bring in -- 13 or before the judge read into the record the 14 case caption --</p> <p>15 Q. Uh-huh.</p> <p>16 A. -- there was an order of this 17 presented to me on the day of the proceedings 18 where trial was commencing. It might have been 19 voir dire.</p> <p>20 When I say trial, I'm talking about 21 the -- from voir dire to --</p> <p>22 Q. Right.</p> <p>23 A. -- verdict.</p> <p>24 Q. Right. Right. We're not talking 25 about when witnesses started testifying. We're</p>	<p style="text-align: right;">Page 20</p> <p>1 devices that are specifically authorized by the 2 Court shall be permitted in the Courthouse 3 and/or Courtroom and/or any other facility 4 and/or locations in which proceedings in this 5 matter are held.</p> <p>6 Q. So did you personally ever petition 7 the Court for permission to bring in a still 8 camera, television camera, audio recording 9 device, or any other electronic device?</p> <p>10 A. I don't recall.</p> <p>11 Q. Would that be something that the 12 Court would have in its possession, if you 13 petitioned the Court?</p> <p>14 A. If they maintain their public 15 records correctly, I would imagine.</p> <p>16 Q. So how would you petition the Court? 17 Did it have to be in writing or could you 18 verbally petition the Court?</p> <p>19 A. I don't know the rules of procedure 20 for the Court. My standard procedure would 21 have been in writing.</p> <p>22 Q. Would you have a copy of that, as 23 well, if you petitioned the Court?</p> <p>24 A. If I petitioned the Court, I would 25 still have a copy.</p>
<p style="text-align: right;">Page 19</p> <p>1 talking about from the inception of State of 2 Ohio versus George Wagner, IV?</p> <p>3 A. Well, it wouldn't be the inception, 4 because that would have been several years 5 prior. But the actual trial itself, yes.</p> <p>6 I just can't recall if it was the 7 first day of voir dire or the first day of 8 opening statements.</p> <p>9 Q. Okay. So then you were aware, when 10 the trial began, that all electronic devices 11 were barred from the courthouse and any other 12 facility or location where the proceedings were 13 held, correct?</p> <p>14 A. I understood that is what the order 15 read.</p> <p>16 Q. Did -- let me back up. 17 Can you read the next two sentences 18 for me in paragraph 4, starting at Media 19 personnel, right where you left off?</p> <p>20 A. Media personnel may petition the 21 Court for permission to bring in still cameras, 22 television cameras and/or audio recording 23 devices for use in the Courtroom, as provided 24 in this Order.</p> <p>25 Only those cameras or recording</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. Okay. But you don't recall if you 2 petitioned the Court?</p> <p>3 A. I cannot recall.</p> <p>4 Q. Do you recall if, on behalf of a 5 media organization, you petitioned the Court 6 for permission to bring in a still camera, 7 television camera, audio recording device, or 8 any other electronic device?</p> <p>9 A. No, I can't recall.</p> <p>10 Q. Did you ever petition the Court to 11 use your cell phone as a recording device?</p> <p>12 A. Not that I recall.</p> <p>13 Q. So you were not permitted to have 14 your cell phone in the courtroom; is that 15 accurate?</p> <p>16 A. I believe the order stated that the 17 phones were not to be present in the courtroom. 18 That is correct.</p> <p>19 Q. So you were not permitted to have 20 your cell phone, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Did you ever bring your cell phone 23 into the courtroom while the trial was being 24 conducted?</p> <p>25 A. I did.</p>

Page 22

1 **Q. How many times, if you had to guess?**
2 A. I know there was at least once.
3 **Q. Okay. Why does that one time stick**
4 **out in your mind?**
5 A. That was the day that I had assumed
6 the role of producer. And it sticks out in my
7 mind because it was questioned as to why I had
8 my cell phone in the courtroom, by the family.
9 And I explained to the bailiff that
10 I was acting in the capacity as the producer
11 for what's known as the media pool.
12 **Q. I'm going to hand you what we'll**
13 **mark as Exhibit 21.**
14 (Deposition Exhibit 21 was marked for
15 identification.)
16 BY MS. SARK:
17 **Q. I'm going to let you review this.**
18 Have you ever seen this document
19 prior to today?
20 A. I have.
21 **Q. Do you know who Jason Frazier is?**
22 A. I do.
23 **Q. Who is he?**
24 A. At the time of the proceedings in
25 the Wagner trial, he was the bailiff for the

Page 23

1 Court.
2 **Q. Okay. And at the top, it says, On**
3 **October 3rd, 2022, at about 12:00 p.m., I was**
4 **contacted by members of the news media that**
5 **Derek Myers, editor of the Scioto Valley**
6 **Guardian, was attempting to assert control of**
7 **the camera pool and label himself as a**
8 **producer.**
9 So on October 3rd, were you the
10 producer for the news media organizations?
11 A. I had taken that position, yes.
12 **Q. When you say taken that position,**
13 **what do you mean?**
14 A. Court TV had withdrawn from the
15 trial --
16 **Q. Uh-huh.**
17 A. -- and the position was left vacant,
18 and I assumed the role.
19 **Q. In order to become the producer, was**
20 **there a process that had to occur?**
21 A. Not to my knowledge.
22 **Q. So no one else had to agree on who**
23 **the producer was, correct?**
24 A. Not to my knowledge.
25 **Q. Okay. The next sentence says, I was**

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1 informed that no one has agreed to Mr. Myers'
2 desire to supervise the camera pool. At about
3 12:45 p.m., I received an email from Derek
4 Myers with an attached -- attachment letter
5 stating that members of the news media had
6 agreed to Derek being the camera pool producer.
7 So did you send an email with an
8 attachment letter to Jason Frazier stating that
9 members of the news media agreed to you being
10 the camera pool producer?
11 A. It was addressed to Judge Deering.
12 Mr. Frazier was our liaison.
13 **Q. Uh-huh.**
14 A. When I say we, I mean the news
15 media. He was our liaison. So it was
16 addressed to Judge Deering. Emailed to
17 Mr. Frazier to pass to Judge Deering.
18 **Q. Okay. So in that email, did you**
19 **state that members of the news media had agreed**
20 **to you being the camera pool producer?**
21 A. I don't recall what the email
22 stated.
23 MS. SARK: Okay. Can we go off the
24 record for one second?
25 (Off the record.)

Page 25

1 BY MS. SARK:
2 **Q. So before we went off the record, I**
3 **think you said you did not recall what the**
4 **email that you sent to Judge Deering stated; is**
5 **that correct?**
6 A. That's correct.
7 **Q. Okay. If you look at the second**
8 **page of Exhibit 21, do you have that packet?**
9 A. I do not. I was not provided a
10 copy.
11 **Q. So if you look at that second page,**
12 **have you seen this document before?**
13 A. Yes.
14 **Q. Okay. What is this document?**
15 A. This is a letter dated for
16 October 3rd, 2022, by me to Judge Deering.
17 **Q. And what is -- what is this email**
18 **concerning?**
19 A. This was a letter on Scioto Valley
20 Guardian letterhead, attached as a PDF to the
21 email, informing the court and Judge Deering
22 that myself, on behalf of the Guardian, would
23 be the television news pool producer in the
24 courtroom.
25 **Q. Okay. In the second paragraph,**

<p style="text-align: right;">Page 26</p> <p>1 under Judge Deering, it says, Effective</p> <p>2 immediately, Derek Myers of Scioto Valley</p> <p>3 Guardian is the television pool producer in the</p> <p>4 courtroom. He should be the Court's point of</p> <p>5 contact for all television related activities</p> <p>6 in the courtroom until further notice.</p> <p>7 Is that accurate, what that says?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. How did you become the</p> <p>10 television pool producer?</p> <p>11 A. As previously stated, Court TV had</p> <p>12 pulled out. They had, previously, a designated</p> <p>13 reporter to be producer in the courtroom, who</p> <p>14 acted as the one who would take full notes.</p> <p>15 They had their cell phone. They</p> <p>16 were the ones who were in contact with</p> <p>17 Mr. Frazier about who was opting in and opting</p> <p>18 out of the trial proceeding so that could be</p> <p>19 relayed downstairs to the media room.</p> <p>20 It also was to allow us, in the</p> <p>21 media room, to know when breaks were occurring.</p> <p>22 And they were also taking general notes.</p> <p>23 When that position became vacated,</p> <p>24 there was no one sitting in that chair to relay</p> <p>25 that information back downstairs to the media</p>	<p style="text-align: right;">Page 28</p> <p>1 behalf of Court TV.</p> <p>2 Q. When you became pool producer, did</p> <p>3 you petition the Court to have your cell phone</p> <p>4 in the courtroom?</p> <p>5 A. This letter was my way of informing</p> <p>6 the Court that I would be the television pool</p> <p>7 producer.</p> <p>8 And, as I mentioned, historically</p> <p>9 speaking, the television pool producer had</p> <p>10 always been permitted to have their phone in</p> <p>11 the courtroom.</p> <p>12 Q. So no, you did not petition the</p> <p>13 Court, correct, to have your court -- to have</p> <p>14 your cell phone?</p> <p>15 A. Not to be difficult, but what is</p> <p>16 your definition of petition?</p> <p>17 Q. Did you ask permission to have your</p> <p>18 cell phone?</p> <p>19 A. On October 3rd, 2022?</p> <p>20 Q. Yes.</p> <p>21 A. I did not ask for permission,</p> <p>22 because it was assumed and precedent had been</p> <p>23 set that the television pool producer would</p> <p>24 have their phone in the courtroom.</p> <p>25 Q. Did you ever petition the Court for</p>
<p style="text-align: right;">Page 27</p> <p>1 room. So that means if the cameras were turned</p> <p>2 off due to an opt-out, there was no way for</p> <p>3 anyone in the media room to know what was going</p> <p>4 on because the pool producer was absent.</p> <p>5 Q. So as the television pool producer,</p> <p>6 were you permitted to have your cell phone in</p> <p>7 the courtroom?</p> <p>8 A. Historically, in that trial, the</p> <p>9 television pool reporter -- producer, rather,</p> <p>10 had always had their cell phone in the</p> <p>11 courtroom. Again, as I mentioned, to be in</p> <p>12 communication with Mr. Frazier and to relay</p> <p>13 information downstairs.</p> <p>14 Q. Do you have -- scratch that.</p> <p>15 On October 3rd, 2022, was that the</p> <p>16 first time that you were the pool producer?</p> <p>17 A. There was a second time, but I</p> <p>18 believe that was the first time, yes.</p> <p>19 I know I had a brief fill-in while</p> <p>20 Court TV, I think, may have gone to lunch or</p> <p>21 something, and they had asked me to sit in.</p> <p>22 Q. Okay. So do you know if Court TV</p> <p>23 petitioned the Court to have their cell phones</p> <p>24 in the courtroom?</p> <p>25 A. I'm not aware of any filings on</p>	<p style="text-align: right;">Page 29</p> <p>1 permission to have your cell phone in the</p> <p>2 courtroom?</p> <p>3 A. Not that I recall.</p> <p>4 Q. So if you go back to Jason Frazier's</p> <p>5 Incident Report, the first page of that packet,</p> <p>6 about halfway down, it says, At about</p> <p>7 1:41 p.m., Deputy Terry Rose contacted me by</p> <p>8 text to inform me that he observed Mr. Myers</p> <p>9 with a cell phone in violation of the Court's</p> <p>10 order.</p> <p>11 Do you recall that?</p> <p>12 A. Well, I was not aware of a text</p> <p>13 message being sent until I read this incident</p> <p>14 report during the discovery phases of this 1983</p> <p>15 action.</p> <p>16 Q. And then it says, Deputy Rose</p> <p>17 ordered Mr. Myers to leave the courtroom; is</p> <p>18 that accurate?</p> <p>19 A. I don't recall who asked me to step</p> <p>20 out, but that would have most likely been in</p> <p>21 line with procedure, as Mr. Rose was tasked</p> <p>22 with that duty.</p> <p>23 Q. And then the next sentence says, I</p> <p>24 spoke with Mr. Myers outside the courtroom. He</p> <p>25 demanded to know why he was removed for having</p>

<p style="text-align: right;">Page 30</p> <p>1 a cell phone that were allowed by others.</p> <p>2 Who else was permitted to have a</p> <p>3 cell phone?</p> <p>4 A. In the courtroom?</p> <p>5 Q. Yes.</p> <p>6 A. Multiple people. The attorneys for</p> <p>7 both sides, the judge, as well as any law</p> <p>8 enforcement member, bailiff, the SRT team that</p> <p>9 was transporting the victims' advocate for the</p> <p>10 family.</p> <p>11 But -- I understand your question,</p> <p>12 and to answer it in what you're looking for</p> <p>13 is -- what I mean by others is the other folks</p> <p>14 who had held the chair of television news</p> <p>15 producer.</p> <p>16 Q. Okay. And then Jason Frazier's</p> <p>17 incident report states, Mr. Myers and I argued</p> <p>18 over his assertion that he was the TV producer</p> <p>19 for the camera pool. I advised Mr. Myers that</p> <p>20 I had already spoken with other pool members</p> <p>21 who denied his claim.</p> <p>22 Do you remember this conversation</p> <p>23 with Mr. Frazier?</p> <p>24 A. I could not repeat verbatim what was</p> <p>25 said, but I do remember the encounter.</p>	<p style="text-align: right;">Page 32</p> <p>1 Is he -- when he refers to letters,</p> <p>2 he's speaking to the previous email that we</p> <p>3 have looked at that you sent to -- that was</p> <p>4 stated to be to Judge Deering?</p> <p>5 A. That is correct.</p> <p>6 Q. This email from Mr. Greiner</p> <p>7 continues, There was a misunderstanding in the</p> <p>8 pool. Mr. Myers believed he was acting as the</p> <p>9 pool producer, and for that reason, he had his</p> <p>10 cell phone with him. He meant no disrespect</p> <p>11 for the Court.</p> <p>12 Do you know what misunderstanding</p> <p>13 Mr. Greiner is referring to?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Can you explain what that</p> <p>16 misunderstanding was?</p> <p>17 A. Yeah. There are no written</p> <p>18 procedures for how a news pool is to operate.</p> <p>19 It's really sort of a jungle, so to speak.</p> <p>20 There are a lot of old school,</p> <p>21 unwritten rules in news media that it is a --</p> <p>22 the news pool is a group of news organizations</p> <p>23 who is to act as a team. And any decisions</p> <p>24 that are to affect the pool as a whole, usually</p> <p>25 there is some sort of vote taken that would</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Do you recall him informing you that</p> <p>2 other pool members denied that you were the</p> <p>3 pool producer?</p> <p>4 A. Again, I don't recall the language</p> <p>5 of the conversation, but I do remember the</p> <p>6 encounter.</p> <p>7 Q. Okay. If you'll look at the third</p> <p>8 page in that packet, have you ever seen this</p> <p>9 document before?</p> <p>10 A. I have.</p> <p>11 Q. Can you explain what it is, please?</p> <p>12 A. This is an email from my attorney at</p> <p>13 the time, Jack Greiner, to Jason Frazier.</p> <p>14 Q. Okay. And the email says, Good</p> <p>15 afternoon, Jason.</p> <p>16 Is that Jason Frazier, the bailiff?</p> <p>17 A. Yes.</p> <p>18 Q. For the Hocking County Common Pleas</p> <p>19 Court, correct?</p> <p>20 A. It's Pike County.</p> <p>21 Q. Or Pike County. I apologize. Pike</p> <p>22 County.</p> <p>23 A. That's okay.</p> <p>24 Q. Then it says, Please consider the</p> <p>25 letter from Derek Myers withdrawn.</p>	<p style="text-align: right;">Page 33</p> <p>1 allow the majority to rule, in favor or</p> <p>2 against, some sort of request or action that</p> <p>3 would affect the pool as a whole group.</p> <p>4 And so what Mr. Greiner's referring</p> <p>5 to here is, when he says, There was a</p> <p>6 misunderstanding in the pool, to the best of my</p> <p>7 recollection, there was some conversation in</p> <p>8 the pool room downstairs, that because the</p> <p>9 chair was vacant and there was lack of</p> <p>10 communication, I stood up in the pool room and</p> <p>11 said that I would be going upstairs to assume</p> <p>12 the role.</p> <p>13 And the misunderstanding comes</p> <p>14 from -- I believe there was another reporter in</p> <p>15 the room who was displeased with my taking</p> <p>16 control of the situation --</p> <p>17 Q. Okay.</p> <p>18 A. -- to fill the vacancy. So he</p> <p>19 complained to Mr. Frazier.</p> <p>20 Q. So I think you said earlier, and if</p> <p>21 I'm incorrect, please let me know. Court TV</p> <p>22 was the pool producer?</p> <p>23 A. Correct.</p> <p>24 Q. When they became the pool producer,</p> <p>25 was that voted upon by individuals or</p>

<p style="text-align: right;">Page 34</p> <p>1 organizations of the media?</p> <p>2 A. I'm not sure. I was not privy to a</p> <p>3 lot of the things about the pool until the</p> <p>4 first day of trial.</p> <p>5 Q. The first day of trial, were they</p> <p>6 already the pool producer?</p> <p>7 A. Correct.</p> <p>8 Q. Was there any other organization or</p> <p>9 individual that was the pool producer --</p> <p>10 A. Throughout --</p> <p>11 Q. -- besides yourself or Court TV?</p> <p>12 A. Throughout the duration of the</p> <p>13 trial?</p> <p>14 Q. Uh-huh.</p> <p>15 A. I'm unsure. I can't recall.</p> <p>16 Q. Do you recall any other time that</p> <p>17 the news organizations or individuals voted on</p> <p>18 a pool producer?</p> <p>19 A. I do not recall voting on that.</p> <p>20 Q. Okay. Okay. Let's go back to the</p> <p>21 media order, Exhibit 20.</p> <p>22 If you'll turn to page 5 for me, it</p> <p>23 will be paragraph 10. And can you read the</p> <p>24 first three sentences of -- yes, the first</p> <p>25 three sentences of paragraph 10?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. I'm going to hand you what has been</p> <p>2 labeled as Exhibit 22, I think.</p> <p>3 Have you seen this before?</p> <p>4 A. Assuming that it hasn't been</p> <p>5 altered, I believe so.</p> <p>6 Q. Can you explain to me what it is?</p> <p>7 A. This is a judicial Notice to</p> <p>8 Prospective Witnesses of Right to Object to</p> <p>9 Being Filmed, Videotaped, Recorded or</p> <p>10 Photographed, under Rule 12, under the</p> <p>11 Superintendence.</p> <p>12 It's a form that was created by the</p> <p>13 Pike County Court of Common Pleas for witnesses</p> <p>14 to acknowledge their right to being filmed.</p> <p>15 Q. And right above Judge Deering's</p> <p>16 signature line, it says, You are hereby</p> <p>17 informed pursuant to Rule 12(C) of the Ohio</p> <p>18 Rules of Superintendence that, as a witness in</p> <p>19 the above-referenced case, you have the right</p> <p>20 to object to being filmed, videotaped, recorded</p> <p>21 or photographed.</p> <p>22 Is that accurate?</p> <p>23 A. That's what it states.</p> <p>24 Q. Okay. And what case was this in</p> <p>25 that it's referencing above?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Paragraph 10 is titled, Prohibited</p> <p>2 Filming, Videotaping and/or Recording.</p> <p>3 It goes on to say, paragraph 10,</p> <p>4 Each witness has the right to object to being</p> <p>5 filmed, videotaped, recorded or photographed.</p> <p>6 Any witness who so requests shall not be</p> <p>7 recorded (either audio or video), televised or</p> <p>8 photographed. During the testimony of the</p> <p>9 objecting witness, all media personnel are</p> <p>10 prohibited from employing any means to record</p> <p>11 the witness in or out of the Courtroom.</p> <p>12 Q. So you read this paragraph prior to</p> <p>13 Jacob Wagner's testimony, correct?</p> <p>14 A. That is correct.</p> <p>15 Q. And are you fine if I refer to him</p> <p>16 as Jake Wagner, as well?</p> <p>17 A. That's fine. Yeah.</p> <p>18 Q. Okay. Were you aware that Jake</p> <p>19 Wagner had opted out of being filmed, recorded,</p> <p>20 photographed, and videotaped during his</p> <p>21 testimony?</p> <p>22 A. I was.</p> <p>23 (Deposition Exhibit 22 was marked for</p> <p>24 identification.)</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 37</p> <p>1 A. Yeah. The case that we've been</p> <p>2 talking about, State of Ohio V. George</p> <p>3 Washington Wagner.</p> <p>4 Q. And are you familiar with Ohio Rules</p> <p>5 of Superintendence 12(C)?</p> <p>6 A. I am.</p> <p>7 Q. Have you read Ohio Rule of</p> <p>8 Superintendence 12(C)?</p> <p>9 A. I have.</p> <p>10 Q. Okay. I'm going to give you what</p> <p>11 is -- what are we on, 20 --</p> <p>12 MR. MEZIBOV: 23.</p> <p>13 BY MS. SARK:</p> <p>14 Q. 23.</p> <p>15 (Deposition Exhibit 23 was marked for</p> <p>16 identification.)</p> <p>17 MR. MEZIBOV: Is this Rule 12(C)?</p> <p>18 MS. SARK: Huh?</p> <p>19 MR. MEZIBOV: Is this Rule 12(C)?</p> <p>20 MS. SARK: It is.</p> <p>21 A. Are we still on the record?</p> <p>22 BY MS. SARK:</p> <p>23 Q. Yes, but we can go off if you need</p> <p>24 to.</p> <p>25 Do you need to go off the record?</p>

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1 A. No, it's fine.

2 Q. Oh, okay.

3 Now, at trial, witnesses were

4 permitted to opt out of being filmed,

5 videotaped, recorded, photographed, under Ohio

6 Rule Superintendence 12(C); is that correct?

7 A. I apologize. Could you rephrase

8 your -- or could you restate your question?

9 Q. Absolutely.

10 At the trial of George Wagner, IV,

11 witnesses were able to opt out of being filmed,

12 videotaped, recorded, and photographed under

13 Ohio Rule of Superintendence 12(C); is that

14 accurate?

15 A. Judge Deering had created the form,

16 which you had previously just spoken about,

17 which was Exhibit 22 --

18 Q. Uh-huh.

19 A. -- and it was interpreted by

20 Judge Deering that Rule 12 allowed for a

21 witness to do that. And by to do that, I mean

22 opt in or out of a -- the ability to be

23 recorded, videotaped, or photographed.

24 Q. When you say that's how

25 Judge Deering interpreted Rule 12(C), what do

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1 you mean?

2 A. It is not how I and other members of

3 the media interpreted 12.

4 Q. Okay. Can you turn to the second

5 page for me, of Rule 12(C), and read section

6 (C)(2) under Limitations?

7 A. C is titled Limitations. Two says,

8 The judge shall inform victims and witnesses of

9 their right to object to being filmed,

10 videotaped, recorded, or photographed.

11 Q. And then under the Commentary, under

12 Rule 12(A) Presiding Judge, that second

13 paragraph. It's just a sentence, but can you

14 read that for me as well?

15 A. 12(A) Presiding Judge. The judge

16 assigned to the trial or hearing shall --

17 Q. I'm sorry. The second paragraph

18 down. Just the one sentence.

19 A. Okay. The filming, videotaping,

20 recording, or taking of photographs of victims

21 or witnesses who object shall not be permitted.

22 Q. So under Rule 12(C), if a witness

23 objects to being filmed, videotaped, recorded,

24 or photographed, it is not permitted, correct?

25 A. That is not what 12(C) says.

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1 Q. Okay. Is that what the notes say,

2 the commentary notes?

3 A. That is what the commentary notes

4 say, yes.

5 Q. So you believe the judge can inform

6 victims and witnesses of their right to object

7 to being filmed, videotaped, recorded, and

8 photographed, but that does not mean that they

9 have the right to not be filmed, videotaped,

10 recorded, or photographed?

11 A. I apologize. Could you re-ask the

12 question?

13 Q. Sure.

14 You believe, under Rule 12(C), that

15 a judge can inform victims and witnesses of

16 their right to object to being filmed,

17 videotaped, recorded, and photographed, but

18 that does not mean that they get to decide that

19 they are not filmed, videotaped, recorded, or

20 photographed; is that accurate?

21 MR. ROBINSON: Object to form.

22 BY MS. SARK:

23 Q. Let me ask it a little bit easier.

24 So you believe 12(C)(2) states that

25 the judge can just inform victims and witnesses

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1 of their right to object to being filmed,

2 videotaped, recorded, or photographed, correct?

3 A. That is correct.

4 Q. But you don't believe that gives the

5 right to victims or witnesses to decide that

6 they do not get to be filmed, videotaped,

7 recorded, or photographed?

8 A. That is correct.

9 Q. Okay. So this issue was actually

10 litigated in the Fourth District Court of

11 Appeals; is that correct?

12 A. It was.

13 Q. Can you tell me a little bit about

14 that case?

15 A. Certainly.

16 Several members of the pool media,

17 including the Scioto Valley Guardian, retained

18 Jack Greiner and his law firm, Graydon, to file

19 a petition.

20 I believe it was -- it may have been

21 a prohibition or it was a mandate, as I can't

22 recall, but it was one of the two, to limit

23 some rules that were imposed by the judge. One

24 of them was the filming and photographing of

25 evidence that was in the court proceedings.

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1 Specifically, there was a bloody
 2 shoe print that the prosecution was upset that
 3 the news media had published. And the news
 4 media felt we were allowed to record that and
 5 publish it. And many members of the media,
 6 including the Guardian, published the bloody
 7 shoe print.

8 And when we, as the news media, were
 9 verbally reprimanded by the Court, I believe it
 10 was off the record, that it was inappropriate
 11 for us to do so.

12 Members of the news media voted,
 13 with their news managers' blessings, to retain
 14 the law firm to petition the Fourth District to
 15 allow us to record evidence that was being
 16 shown on the television, particularly the more
 17 gruesome evidence.

18 The prosecution was picking and
 19 choosing, at the time, what evidence could and
 20 could not be filmed by us. They would look at
 21 the pool operator and say, do not film this.
 22 And the media felt that that was inappropriate.

23 So Mr. Greiner, on behalf of the --
 24 I believe there were seven to maybe nine
 25 members who were part of that case caption, who

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1 litigated the matter before the Fourth
 2 District, asking for permission, and the Fourth
 3 District ruled in our favor, that we were
 4 allowed to record the evidence.

5 **Q. But that one didn't -- that case did**
 6 **not deal specifically with Rule 12(C), did it?**
 7 **Wasn't there a case that you filed**
 8 **on your own in the Fourth District Court of**
 9 **Appeals?**

10 A. I did file a pro se case in 12 --
 11 regarding Rule 12. And I'm just -- give me a
 12 moment here.

13 **Q. Uh-huh.**

14 A. Just to speed things up here,
 15 because I'm understanding the question.

16 I filed a petition in the Fourth
 17 District asking the Fourth District to rule in
 18 favor of my request, to allow us to have
 19 hearings and to rule that probable cause be
 20 found as to why the person who opted in or out
 21 from the witness stand could or should not be
 22 recorded, based on the grounds that it may
 23 affect the integrity of the trial.

24 **Q. So let me ask this. Under Rule**
 25 **12(C)(2), you said that you did not believe**

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1 **that it gave witnesses and victims the ability**
 2 **to decide not to be filmed, videotaped,**
 3 **recorded, and photographed, correct?**

4 A. That's correct.

5 **Q. So did you believe that you could go**
 6 **against a witness who opts out of being filmed,**
 7 **videotaped, recorded, or photographed?**

8 A. I never believed that a witness was
 9 allowed to opt in or out, and I argued that in
 10 the petition.

11 Section (C) states that they shall
 12 be informed. It does not state that they have
 13 the option to pick one way or the other.

14 **Q. But the commentary notes do state**
 15 **that the filming, videotaping, recording, or**
 16 **taking of photographs of victims or witnesses**
 17 **who object shall not be permitted, correct?**

18 A. The commentary notes state that, but
 19 that's not the rule.

20 **Q. So you believed that even if a**
 21 **witness filled out the opt-out form, that**
 22 **members of the media were still allowed to**
 23 **film, videotape, record, or photograph them?**

24 A. That is what my petition to the
 25 Fourth District requested to be affirmed, yes.

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1 **Q. But did you believe that?**

2 A. Yes.

3 **Q. And in the case that you filed on**
 4 **your own, did you have an attorney represent**
 5 **you?**

6 A. I did not.

7 **Q. And you filed that against**
 8 **Judge Deering, correct?**

9 A. That is correct. I believe you were
 10 on the phone for that hearing.

11 **Q. I was.**

12 **And Judge Deering, at that time, was**
 13 **the judge who was handling the George**
 14 **Wagner, IV case, correct?**

15 A. That is correct.
 16 (Deposition Exhibit 24 was marked for
 17 identification.)

18 BY MS. SARK:

19 **Q. I'm going to hand you what's been**
 20 **marked as Exhibit 24.**

21 **Have you ever seen this document**
 22 **before?**

23 A. I have.

24 **Q. Okay. And can you explain to me**
 25 **what it is?**

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1 A. May I have a moment to review it?

2 **Q. Absolutely.**

3 A. May you ask your question again,

4 please?

5 **Q. Yes. Can you tell me what this**

6 **judgment entry is regarding?**

7 A. Yes. This is a judgment entry for

8 the Court of Appeals in the Fourth District,

9 Case Number 22917.

10 It's a judgment entry signed by the

11 administrative judge, Michael Hess. It's

12 revising a previous order that had been issued

13 on October 25th.

14 **Q. And this is in the case of State of**

15 **Ohio, ex rel. Derek J. Myers versus Honorable**

16 **Randy D. Deering; is that correct?**

17 A. Correct.

18 And just for the record, it was

19 pertaining to the petition that we just spoke

20 of momentarily, a few moments ago, regarding

21 the Wagner case. Yes.

22 **Q. And this is the case that you filed**

23 **on your own, correct?**

24 A. That is correct.

25 **Q. You did not have an attorney**

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1 **represent you, correct?**

2 A. Not at the time of filing.

3 **Q. Okay. So the first three sentences**

4 **of this order state, This entry revises our**

5 **previous order issued October 25th, 2022 as it**

6 **relates to the photographing and recording of**

7 **witnesses who object to such recording pursuant**

8 **to Superintendence Rule 12(C). The filming,**

9 **videotaping, recording, or taking of**

10 **photographs of victims or witnesses who object**

11 **shall not be permitted. The trial judge is not**

12 **required to hold a hearing or make evidentiary**

13 **findings; is that accurate?**

14 A. That is what it reads.

15 **Q. So when you petitioned the Court**

16 **with your own interpretation of Superintendence**

17 **Rule 12(C), this entry holds that a witness or**

18 **victim can make the decision not to be filmed,**

19 **videotaped, recorded, or photographed, correct?**

20 A. That is correct.

21 But, also, for the record, there

22 was, as noted in the very first sentence of

23 Exhibit 24, This entry revises our previous

24 order.

25 So there had been a previous order

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1 issued by the Fourth District. And I don't,

2 obviously, have it in front of me, but, to the

3 best of my recollection, it was that

4 Judge Deering was ordered to hold, essentially,

5 what I would call a probable cause hearing as

6 to why a witness who would object if their

7 videotaping would -- or audio recording or

8 photographing would -- how it would impact the

9 integrity of the trial. And he was then tasked

10 with holding a hearing to find out the probable

11 cause as to why it would or would not affect

12 the integrity of the trial.

13 Mr. Wagner was on the stand

14 preparing to take testimony on the date of

15 October 26, as time stamped. And I believe you

16 were on the phone for that as well.

17 The -- Judge Deering was holding a

18 hearing, as ordered in the previous entry from

19 Michael Hess of the Fourth District, as to the

20 probable cause, if it would impact the

21 proceedings if Mr. Wagner objected.

22 Mr. Wagner asserted his right to not

23 be filmed, according to Judge Deering. And

24 Judge Deering ultimately ruled that it would

25 impact the integrity of the trial if

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1 Mr. Wagner -- excuse me -- if Mr. -- Jake

2 Wagner was going to be recorded.

3 At the conclusion of that hearing,

4 we took a brief recess. As we were walking out

5 of the courtroom, various members of the news

6 media, including myself, were served a copy of

7 this revised entry that withdrew the process

8 that had just taken place.

9 **Q. Okay. So the first entry, the first**

10 **decision that was made by the Fourth District**

11 **Court of Appeals was on October 25th, 2022,**

12 **correct?**

13 A. I don't recall the date that they --

14 that the first order was issued. It was --

15 **Q. Well, the first sentence of this**

16 **judgment entry says, This entry revises our**

17 **previous order issued October 25th, 2022; is**

18 **that accurate?**

19 A. Okay. So to answer your question,

20 based on Judge Hess, it would have been -- the

21 first order issued was on October 25th.

22 **Q. And then what is the time stamp date**

23 **of the current judgment entry that's in front**

24 **of you?**

25 A. The 26th of October 2022, so a day

Page 50

1 later.

2 Q. So a day later, this judgment entry

3 that you have in front of you, Exhibit 24, was

4 entered, correct?

5 A. That's correct, overruling the

6 previous one on the 25th.

7 Q. Okay. And the Fourth District Court

8 of Appeals upheld Judge Deering's

9 interpretation of Superintendence Rule 12(C) by

10 finding that the filming, videotaping,

11 recording, and photographing of victims or

12 witnesses who object is permitted?

13 A. After I received this judgment

14 entry, I no longer pursued the litigation in

15 that case, so I'm not sure exactly what the

16 outcome was.

17 I never ruled -- or I never read the

18 final judgment entry of the case that came

19 several weeks later.

20 Q. But this judgment entry in front of

21 you says, Pursuant to Superintendence Rule

22 12(C), the filming, videotaping, recording, or

23 taking of photographs of victims or witnesses

24 who object shall not be permitted; is that

25 accurate?

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1 A. In this judgment entry, that is

2 correct. And then we would have to go on. The

3 pleadings of the complaint would have to be

4 litigated.

5 So this was just a request for a

6 temporary restraining order, essentially. This

7 wasn't the final outcome of that case.

8 Q. So did you appeal this decision?

9 A. I did not. I stated, once this came

10 out, I withdrew from the proceedings. And I

11 believe, as you may recall more than I, since

12 you were counsel on that case, I simply just

13 did not respond to any filings.

14 And I believe the Court ended up

15 ruling in favor of Judge Deering, based on the

16 docket that I read. I never read the actual

17 entries.

18 Q. So there weren't any other hearings

19 or motions filed after this judgment entry, to

20 your knowledge?

21 A. There were. Not by me. It was by

22 your firm and others, but I didn't read them.

23 Q. Okay. So, to your knowledge, the

24 last judgment entry that you read said,

25 Pursuant to Superintendence Rule 12(C), the

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1 filming, videotaping, recording, or taking of

2 photographs of victims or witnesses who object

3 shall not be permitted; is that correct?

4 A. That is correct.

5 Q. Okay. And it also says, The trial

6 court judge is not required to hold a hearing

7 or make evidentiary findings; is that correct?

8 A. That is correct.

9 Q. Okay. I'm going to show you what

10 I've labeled as --

11 Well, let me ask this first.

12 Did Jake Wagner opt out of being

13 filmed, videotaped, recorded, and/or

14 photographed?

15 A. He did.

16 (Deposition Exhibit 25 was marked for

17 identification.)

18 BY MS. SARK:

19 Q. Okay. I'm going to hand you what's

20 marked as Exhibit 25.

21 Have you ever seen this document

22 before?

23 A. I don't recall.

24 Q. Okay. Can you provide the date that

25 Mr. Wagner signed this at the bottom?

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1 A. According to Exhibit 25, the

2 signature of the witness, which appears to be

3 written in by his attorney, Gregory Meyers, is

4 dated for 10-24-2022.

5 Q. And pursuant to this form, Edward

6 Jake Wagner opted out of being filmed,

7 videotaped, recorded, or photographed, correct?

8 A. Correct. It says, That I do object

9 to being filmed, videotaped, recorded, or

10 photographed.

11 Q. Okay. Now, it's my understanding

12 that you were not present for all of Jake

13 Wagner's testimony; is that accurate?

14 A. That is correct.

15 Q. And you were actually out of the

16 country during part of his testimony, correct?

17 A. I was.

18 Q. What days did you leave the country

19 in October of 2022?

20 A. I don't have my flight itinerary in

21 front of me, but I believe I left Thursday of

22 that week, prior to the 24th.

23 Q. Let me hand you what we will mark as

24 Exhibit 26.

25

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1 (Deposition Exhibit 26 was marked for
2 identification.)

3 BY MS. SARK:

4 Q. Does this look like a copy of your
5 flight itinerary from October of 2020 -- well,
6 when you left the country in October of 2022?

7 A. That is correct.

8 Q. Okay. Can you state for me what
9 days you were gone in October of 2022?

10 A. Gone from where?

11 Q. The country. Out of the country.

12 A. Oh, yes. So I left Columbus, Ohio
13 on October 20th, 2022, and I returned back to
14 Columbus, Ohio on Tuesday, October 25th, 2022.

15 Q. And according to this itinerary, you
16 landed in Columbia on October 21st, I believe?

17 A. It was shortly after midnight. So,
18 yes, it legally was the 21st.

19 Q. Okay. And then on Monday, the 24th,
20 October 24th, 2022, you left Columbia, correct?

21 A. The legal date was 11:45 p.m. on the
22 24th.

23 Q. Did you go by yourself?

24 A. I did.

25 Q. I'm going to show you what we will

Page 55

1 mark as Exhibit 27.

2 (Deposition Exhibit 27 was marked for
3 identification.)

4 MS. SARK: Can we go off the record
5 for a second?

6 (Off the record.)

7 MS. SARK: We can go back on the
8 record.

9 BY MS. SARK:

10 Q. Okay. I've handed you what's been
11 labeled as Exhibit 27; is that accurate, 27?

12 A. Yes.

13 Q. Yes.

14 And those are entitled, Plaintiff
15 Responses to Defendants' First Set of Requests
16 for Admissions, Interrogatories, and Requests
17 for Production of Documents to Plaintiff.

18 Have you seen this document prior to
19 today?

20 A. Yes.

21 Q. Did you help to prepare the
22 responses in this document?

23 A. I did prepare the responses in this
24 document.

25 Q. Okay. Did you gather the documents

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1 and recordings in response to the request for
2 production of documents?

3 A. Is there a particular number that
4 you're referring to?

5 Q. Well, so defendants sent to you,
6 request for production of documents.

7 A. Yes.

8 Q. And I think there were six all
9 together? Yes, six.

10 A. I'm just looking here. It says,
11 provide a -- okay, I see here. Request for
12 production of documents. All right. Provide
13 copies of any documents reviewed. Okay.

14 Q. Did -- did you provide documents
15 and/or recordings in response to the request
16 for production of documents?

17 A. We did.

18 Q. Okay. Did you review the responses,
19 prior to providing it to me, to ensure their
20 accuracy?

21 A. Yes. I typed them.

22 Q. Okay. I'm going to have you look at
23 Interrogatory Number 2. It is on page 4 -- or
24 page 3. I'm sorry.

25 And Interrogatory Number 2 states:

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1 In your Opposition to Defendants' Motion for
2 Judgment on the Pleadings, (Doc. #: 17), you
3 state that you were out of the country on
4 October 24th, 2022.

5 Provide the location where you were
6 on October 24th, 2022, the dates you were at
7 the aforesaid location, when you returned to
8 Pike County, Ohio, and the purpose for
9 traveling out of town.

10 And your response was: I flew to
11 Bogota, Columbia on October 20th, 2022, and
12 returned to Pike County on October 26th, 2022.
13 The purpose of my travel was to receive dental
14 work and to visit friends.

15 Is this an accurate representation
16 of Interrogatory Number 2?

17 A. Yes.

18 Q. What dental work did you have done?

19 MR. MEZIBOV: A deposition is not
20 supposed to be like pulling teeth.

21 MR. ROBINSON: Can we go off the
22 record for a second?

23 (Off the record.)

24 BY MS. SARK:

25 Q. So let me ask you this. Did your

<p style="text-align: right;">Page 58</p> <p>1 flight times change at all from the time you</p> <p>2 booked the flights to the time the flights</p> <p>3 actually happened?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Okay. So according to your</p> <p>6 itinerary that you provided to me, you landed</p> <p>7 in Columbus on October 25th, 2022, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Did you, on that same day, go back</p> <p>10 to the Pike County Courthouse?</p> <p>11 A. I did not.</p> <p>12 Q. And you went -- scratch that.</p> <p>13 You went back to Pike County on</p> <p>14 October 26th, correct?</p> <p>15 A. That is correct.</p> <p>16 Q. And, at that time, did you go to the</p> <p>17 trial for George Wagner, IV?</p> <p>18 A. I did, yes. Yes, I did.</p> <p>19 Q. Do you recall if Jake Wagner was</p> <p>20 still testifying that day?</p> <p>21 A. He was. That was the date that you</p> <p>22 were on the phone and we held the first</p> <p>23 preliminary, so to speak, preliminary hearing</p> <p>24 from the first order of the Fourth District</p> <p>25 saying that Judge Deering had to have hearings.</p>	<p style="text-align: right;">Page 60</p> <p>1 that you received from an unidentified source.</p> <p>2 And the response was, Responsive</p> <p>3 recording attached.</p> <p>4 A. That is correct.</p> <p>5 Q. What I received was a</p> <p>6 10-minute-13-second audio recording, which I</p> <p>7 will bring up now.</p> <p>8 A. May we go off the record?</p> <p>9 MS. SARK: Yeah, that's fine.</p> <p>10 MR. MEZIBOV: If you want to talk to</p> <p>11 Emmett, yes.</p> <p>12 (Off the record.)</p> <p>13 MS. SARK: Are we back on?</p> <p>14 BY MS. SARK:</p> <p>15 Q. So we will label this as Exhibit 28.</p> <p>16 And this is what I received in response to</p> <p>17 request for Production of Documents Number 3.</p> <p>18 (The video was played.)</p> <p>19 BY MS. SARK:</p> <p>20 Q. And I just want to play this for a</p> <p>21 minute so we can get -- to make sure that it's</p> <p>22 the same audio recording that we were both</p> <p>23 referring to.</p> <p>24 So is this the recording you</p> <p>25 received in its entirety from the unidentified</p>
<p style="text-align: right;">Page 59</p> <p>1 Q. So the recording you received of</p> <p>2 Jake Wagner's testimony, did you receive that</p> <p>3 prior to going into the trial on October 26th?</p> <p>4 A. I had received the copy some time</p> <p>5 between the late evening of the 25th and the</p> <p>6 morning of the 26th.</p> <p>7 So going into the hearing on the</p> <p>8 26th, I would have had, in my possession, that</p> <p>9 recording, yes.</p> <p>10 Q. And you were -- you published that</p> <p>11 recording online, correct?</p> <p>12 A. A condensed version, yes.</p> <p>13 Q. Okay. You say a condensed version,</p> <p>14 so what did you receive?</p> <p>15 A. What appeared to be two full days of</p> <p>16 testimony.</p> <p>17 Q. So you received recordings of Jake</p> <p>18 Wagner's testimony, in its entirety, from</p> <p>19 October 24th and October 25th, 2022?</p> <p>20 A. That is correct.</p> <p>21 Q. If you'd go back to your responses</p> <p>22 to request for production of documents, on</p> <p>23 Request for Production of Documents Number 3,</p> <p>24 page 5, I said, Provide a copy of the audio</p> <p>25 recording of Edward Jacob Wagner's testimony</p>	<p style="text-align: right;">Page 61</p> <p>1 source?</p> <p>2 A. It is not.</p> <p>3 Q. Why was I not provided a copy of the</p> <p>4 audio recording of Jake's testimony that you</p> <p>5 received from the unidentified source?</p> <p>6 A. Well, it was -- your Request for</p> <p>7 Production Document Number 3 came well after</p> <p>8 the publication of the recording.</p> <p>9 During the date of publication,</p> <p>10 which was October 2022, when I received the</p> <p>11 recording, to the date of your Request for</p> <p>12 Production of Document Number 3, the entire</p> <p>13 recording two-day audio, that I had said</p> <p>14 earlier that appeared to be two full days of</p> <p>15 testimony, was no longer in my possession.</p> <p>16 And the only thing that remained in</p> <p>17 my possession, pertaining to any audio</p> <p>18 recording of this matter, was what you were</p> <p>19 provided.</p> <p>20 Q. So why was it no longer in your</p> <p>21 possession?</p> <p>22 A. I believe that that laptop had been</p> <p>23 broken. We had just gotten a new one and lost</p> <p>24 several files. I'm not exactly sure what</p> <p>25 happened.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. What laptop was it on? Let me ask 2 that again.</p> <p>3 What laptop were -- was the -- were 4 the recordings on, from October 24th and 25th?</p> <p>5 A. When I had received them, I placed 6 them on my work laptop, which was a MacBook.</p> <p>7 Q. Is that the laptop that was seized 8 in this case?</p> <p>9 A. It was not.</p> <p>10 I no longer have that MacBook. Like 11 I said, it broke. I lost several files, 12 including the full version of Mr. Wagner's 13 testimony.</p> <p>14 Q. And you didn't make any backup 15 copies of that recording -- the recordings that 16 the unidentified source gave you?</p> <p>17 A. Well, at the time, there may have 18 been, but they were all stored locally on that 19 computer.</p> <p>20 I believe, you know, when -- I 21 personally had possession of the audio, and I 22 personally oversaw the condensed version.</p> <p>23 So there were duplicates made, yes, 24 but they were all locally stored on the 25 computer that no longer exists.</p>	<p style="text-align: right;">Page 64</p> <p>1 will be combined analytics instead of a 2 separate analytical report.</p> <p>3 And so I believe the Derek Myers 4 Facebook page, which was a professional page 5 that I used for journalism work, had permission 6 to cross-share it, and I believe I did 7 cross-share it.</p> <p>8 Q. Was it common that any article you 9 shared on the Guardian you also shared on your 10 Facebook -- your personal Facebook page?</p> <p>11 A. Well, let's clarify what you mean by 12 personal Facebook page.</p> <p>13 Q. On your Derek J. Myers Facebook 14 page, was it common to share articles that you 15 had posted on the Guardian?</p> <p>16 A. The Derek Myers professional 17 Facebook page is just that, a professional 18 Facebook page. And it was very common, on a 19 daily basis, routinely to share and cross-post, 20 yes.</p> <p>21 Q. Did you have any other Facebook 22 pages for yourself, personally, besides the 23 Derek J. Myers Facebook page?</p> <p>24 A. Yes. You have to have a Facebook 25 account to access a professional page.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Do you recall when that laptop 2 broke?</p> <p>3 A. I do not recall, but I do know that 4 it was before the production request.</p> <p>5 Q. Okay. You published the recording 6 of Jake Wagner's testimony in what you called a 7 condensed version, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Where did you publish that?</p> <p>10 A. It was uploaded to, I believe, what 11 we called in -- on the Scioto Valley Guardian's 12 website, we have a platform called Brid Video 13 that hosts our video.</p> <p>14 It was uploaded to that. And then 15 it was also, I believe, uploaded to social 16 media, such as Facebook and, perhaps, YouTube.</p> <p>17 Q. Was it posted on your personal 18 Facebook page?</p> <p>19 A. I had cross-shared it, I believe.</p> <p>20 Q. What do you mean by cross-shared it?</p> <p>21 A. Facebook has a feature that one page 22 will give permission to another page to share a 23 video. That way the analytics are aligned.</p> <p>24 So if you watch a video on one page 25 and a video on the second page, the analytics</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Okay. So how many Facebook accounts 2 did you have -- could you access? Let me ask 3 that.</p> <p>4 A. I had one active at the time.</p> <p>5 Q. Which was?</p> <p>6 A. I believe it was Derek Joel or Joel 7 Derek.</p> <p>8 Q. And that was your personal Facebook 9 page?</p> <p>10 A. That is correct.</p> <p>11 Q. And then your professional Facebook 12 page was Derek J. Myers?</p> <p>13 A. It was just Derek Myers, but, yes.</p> <p>14 Q. Okay. Did you post or share the 15 article providing the testimony of Jake Wagner 16 on your personal Facebook page?</p> <p>17 A. I don't recall.</p> <p>18 Q. At the time you published the 19 article with the audio recording, you were 20 aware that Jake Wagner had opted out of being 21 recorded, filmed, videotaped, and photographed, 22 while testifying, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Was there any exception that you 25 were aware of that would permit an individual</p>

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1 or member of the media to record him?

2 A. No.

3 Q. Okay. I'm going to hand you what

4 has been labeled as Exhibit 28.

5 THE REPORTER: No.

6 MS. SARK: Or 29. Sorry. You're

7 right, yeah.

8 THE REPORTER: 28 was the audio.

9 (Deposition Exhibit 29 was marked for

10 identification.)

11 BY MS. SARK:

12 Q. Okay. Have you seen this document

13 before?

14 A. Yes. This is a document that we

15 provided to you.

16 Q. Okay. And it is reflected at the

17 bottom, Bates stamp Myers 33 through Myers 37,

18 correct?

19 A. That is correct. I'm not sure if

20 that's our stamp or yours, but, yes.

21 Q. The second page in this article --

22 let me find the paragraph. The second

23 paragraph, it states, Jake Wagner chose not to

24 be video or audio recorded by news media.

25 I'm going to stop there.

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1 Isn't it accurate that no one was

2 permitted to video or audio record Jake

3 Wagner's testimony?

4 A. I wouldn't say no one. The court

5 reporter was recording his audio.

6 Q. Okay. Besides the court reporter,

7 was there anyone, that you knew of, that was

8 permitted to video or audio record Jake

9 Wagner's testimony?

10 A. Not to my knowledge.

11 Q. So it wasn't just the news media

12 that was not allowed to video or audio record,

13 correct?

14 A. Correct.

15 Q. And then the article states, Derek

16 Myers -- it's in that same sentence. Derek

17 Myers won a temporary restraining order which

18 forced presiding Judge Randy Deering to allow

19 the filming of witnesses unless the judge felt

20 the filming would compromise the integrity of

21 the trial.

22 This isn't -- that's not accurate,

23 correct?

24 A. Let me read it for myself, please.

25 Q. Okay.

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1 A. That is accurate.

2 Q. So the Fourth District Court of

3 Appeals' opinion, that we just looked at,

4 Exhibit 24 --

5 A. Yes.

6 Q. -- that specifically states that the

7 filming, videotaping, recording, or taking

8 photographs of victims or witnesses who object

9 shall not be permitted. The trial court judge

10 is not required to hold a hearing or make

11 evidentiary findings.

12 Is that what that judgment entry

13 states?

14 A. It does state that. But it also

15 states that it's a revision to a previous order

16 from October 25th.

17 And the order on October 25th said

18 that Derek Myers had won a restraining order,

19 essentially -- I'm paraphrasing, but it says --

20 and I'm summarizing the order, but the previous

21 order from October 25th says that Judge Deering

22 had to hold the hearing.

23 In fact, Judge Deering did hold a

24 hearing and you were on speakerphone for that

25 hearing.

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1 Q. And you said you received a copy of

2 this judgment entry, you believe, after you

3 exited the court for that hearing on

4 October 26th, 2022, correct?

5 A. That's correct.

6 Q. Okay. Can you tell me what date

7 this article was published in Exhibit 29?

8 A. According to the dateline,

9 October 28th.

10 Q. So when you published this, you knew

11 that it was inaccurate that you claim you won a

12 temporary restraining order which forced Judge

13 Randy Deering to allow the filming of witnesses

14 unless the judge felt the filming would

15 compromise the integrity of the trial, correct?

16 MR. ROBINSON: Objection to form.

17 BY MS. SARK:

18 Q. Do you want me to ask it

19 differently? Derek, would you like me to ask

20 it differently?

21 A. Please ask the question again.

22 Q. Okay. So this article was published

23 October 28th, 2022, correct?

24 A. This article was published

25 October 28th, 2022.

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1 Q. And in this article, you say that
 2 you won a temporary restraining order, which
 3 forced Judge Deering to allow the filming of
 4 witnesses unless the judge felt the filming
 5 would compromise the integrity of the trial; is
 6 that accurate?
 7 A. It is accurate.
 8 Q. Okay. But that is not true, right?
 9 A. It is true. There was an entry on
 10 October 25th, 2022, by the Fourth District,
 11 that said that Judge Deering would have to hold
 12 hearings.
 13 And there was a subsequent hearing
 14 held on the 26th. And you were present on
 15 speakerphone for that hearing.
 16 Q. But the October 26th, 2022 judgment
 17 entry revised the October 25th, 2022 judgment
 18 entry, correct?
 19 A. The October 6th (sic) judgment entry
 20 revised the order issued on October 25th.
 21 Q. I think you said October 6th.
 22 October 26th?
 23 A. October 26th revised the order for
 24 October 25th, correct.
 25 Q. So when you published this article

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1 on October 28th, 2022, you knew that the
 2 judgment entry from October 26th, 2022, stated
 3 that Judge Deering did not have to hold a
 4 hearing regarding witnesses who opt out of
 5 being filmed, videotaped, recorded, or
 6 photographed, correct?
 7 A. Yes. The entry was revising the
 8 order from the 25th that said that he had to.
 9 Q. That said he had to what?
 10 A. Hold a hearing on Wednesday morning.
 11 Well, it didn't say Wednesday
 12 morning, but he held -- he chose to hold the
 13 hearing on Wednesday morning.
 14 Q. Let me ask this again.
 15 When you published this on
 16 October 28th, 2022, this news article, you knew
 17 what the judgment entry from October 26th, 2022
 18 said, correct?
 19 A. Correct.
 20 Q. Which said, the trial judge is not
 21 required to hold a hearing or make evidentiary
 22 findings, correct?
 23 A. That is correct.
 24 Q. Okay. To your knowledge, there was
 25 nothing that ever permitted Jake Wagner's

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1 testimony to be filmed, right?
 2 A. Sorry. Could you re-ask your
 3 question?
 4 Q. To your knowledge, there was no
 5 exception that ever permitted Jake Wagner's
 6 testimony to be filmed, correct?
 7 A. Correct.
 8 Q. To your knowledge, there was no
 9 exception that ever permitted Jake Wagner's
 10 testimony to be streamed, correct?
 11 A. Correct.
 12 Q. To your knowledge, there was no
 13 exception ever permitted that would allow Jake
 14 Wagner's testimony to be videotaped, correct?
 15 A. Could you re-ask the question?
 16 Q. Yeah.
 17 To your knowledge, there was never
 18 any exception that permitted Jake Wagner's
 19 testimony to be videotaped?
 20 A. That's correct.
 21 Q. And, to your knowledge, there was
 22 never any exception that permitted Jake
 23 Wagner's testimony to be recorded, correct?
 24 A. With the exception of the court
 25 reporter, that is correct.

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1 Q. The third paragraph down in that
 2 article you published, Exhibit 29, it states,
 3 The Guardian received a portion of Jake
 4 Wagner's testimony on his first day on the
 5 witness stand.
 6 A. So that's paragraph five, but in
 7 paragraph three on that page.
 8 Q. Correct.
 9 A. And you would -- it says, The
 10 Guardian received a portion of Jake Wagner's
 11 testimony on his first day on the witness
 12 stand. That is correct.
 13 Q. So I thought you had stated
 14 previously that you received audio recording
 15 from Jake Wagner's testimony from his first and
 16 second day on the witness stand; is that
 17 correct?
 18 A. That is correct.
 19 Q. And then the next sentence says, The
 20 Guardian wants to disclose that the audio was
 21 not recorded by a member of the media and was
 22 submitted to the Guardian's newsroom by a
 23 courthouse source who is authorized to have
 24 their cell phone in the room.
 25 Is that accurate, what I read?

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1 A. Yes.

2 Q. Was the audio provided to you,

3 specifically or the newspaper?

4 A. As answered in -- for request for

5 documents and your interrogatories, it was left

6 on my desk between the late evening of the 25th

7 and the 26th.

8 Q. You weren't present during the first

9 day of Jake Wagner's testimony, correct?

10 A. That is correct. I was out of the

11 country.

12 Q. So how did you know the recording

13 was from the first day?

14 A. Based on the reporting from other

15 media outlets, it was clear that the words that

16 he was stating -- because he had been directly

17 quoted by some of the other media outlets,

18 specifically the Cincinnati Enquirer had

19 directly quoted Mr. Wagner. Those quotes were

20 verbatim in the audio.

21 Q. So if you had the recording and you

22 could directly quote it, why did you not choose

23 to directly quote it instead of publishing the

24 recording of Jake Wagner's testimony?

25 A. I'm sorry. Can you re-ask or

Page 75

1 rephrase the question?

2 Q. Sure.

3 Since you had the recording of Jake

4 Wagner's testimony, why did you choose not to,

5 like other news sources, directly quote it, and

6 instead publish the actual testimony of Jake

7 Wagner?

8 A. Well, it was ten minutes of audio.

9 I'm not a transcriptionist. And, frankly, we

10 have learned that our demographic likes to

11 watch videos and audio instead of reading

12 lengthy transcripts. That is a trend in

13 society today for news publications worldwide.

14 And so the video -- there is no need

15 to, in my judgment, personal judgment, there's

16 no need to quote it when somebody can simply

17 click play above it and listen to it.

18 Q. But you could have directly quoted

19 Jake Wagner's testimony, correct?

20 A. Well, sure. Yes.

21 Q. Prior to this trial, do you --

22 strike that.

23 Prior to the trial, did you know the

24 person who, in this case is the unidentified

25 source, who recorded the testimony of Jake

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1 Wagner?

2 A. Can you re-ask the question, please?

3 Q. Yes.

4 Did you know the person, prior to

5 trial, who recorded the testimony of Jake

6 Wagner?

7 MR. MEZIBOV: I'm going to object to

8 the form of the question --

9 MS. SARK: Okay.

10 MR. MEZIBOV: -- the substance of

11 it. I think it's a little confusing.

12 I'm not sure whether you're asking him

13 whether he knew beforehand --

14 MS. SARK: Okay.

15 MR. MEZIBOV: -- that somebody was

16 going to record it.

17 MS. SARK: I can rephrase it.

18 MR. ROBINSON: We need to know, you

19 know, whether he even knows who the

20 person was.

21 MS. SARK: Right. And that's what

22 I'm trying to get at. Yeah, yeah, yeah.

23 BY MS. SARK:

24 Q. So, clearly, somebody recorded the

25 testimony of Jake Wagner and provided that to

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1 you, correct?

2 A. That is correct.

3 Q. That's what you're claiming,

4 correct?

5 A. That is what happened, yes.

6 Q. The person who recorded the

7 testimony, did you know that person prior to

8 the trial of Jake Wagner?

9 MR. MEZIBOV: I think the confusion

10 is whether you're asking him did he know,

11 before the trial, that a person was going

12 to record it --

13 MS. SARK: No.

14 MR. MEZIBOV: -- or did he

15 learn after the --

16 MS. SARK: Did he know the actual

17 person. He's claiming somebody recorded

18 the testimony.

19 MR. MEZIBOV: Right.

20 MS. SARK: Did he know the person

21 who recorded the testimony?

22 MR. MEZIBOV: Okay.

23 MR. ROBINSON: I think we need a

24 foundation of whether he knows who

25 recorded it before we can know if he knew

Page 78

1 them before it was recorded.

2 MS. SARK: Okay.

3 MR. MEZIBOV: That's the confusion.

4 BY MS. SARK:

5 **Q. So do you know who recorded the**

6 **testimony of Jake Wagner?**

7 A. I have my speculations, but if I did

8 know, I would not be able to tell you.

9 **Q. And I don't want the names. I'm**

10 **just asking if you know who the person is that**

11 **recorded Jake Wagner's testimony?**

12 A. As I stated, I have my speculations.

13 And if I did know, I would not be able to tell

14 you.

15 **Q. Okay. That still doesn't answer my**

16 **question. I need a yes or no.**

17 **Do you know who the person is that**

18 **recorded Jake Wagner's testimony?**

19 A. My answer to your question is, I

20 have speculation. And if I did or did not

21 know, I would not be able to tell you.

22 That is my answer.

23 **Q. When you say you have speculations,**

24 **what are your speculations based upon?**

25 A. We live in a small community. We

Page 79

1 have sources. And not everyone would have

2 access to the courtroom, particularly on the

3 days of testimony.

4 I believe the courtroom's capacity,

5 after the fire marshal was called, was

6 somewhere in the vicinity of 90. So we know

7 that it was down to a pool of 90 people.

8 **Q. So you will not answer yes or no**

9 **whether you knew who the person was that**

10 **recorded the testimony?**

11 MR. MEZIBOV: I'm going to object,

12 because I think -- if you allow me

13 this -- I think what he's telling you is

14 he can speculate as to who it is, but

15 that does not -- that's not the same as

16 having actual knowledge of who did it.

17 MS. SARK: And that's my question,

18 yes or no, because if he -- if he doesn't

19 have actual knowledge, his answer would

20 be no, I don't know who did it.

21 MR. MEZIBOV: I don't think you've

22 asked him if he had actual knowledge.

23 Maybe I'm wrong.

24 Why don't you ask him that question?

25 BY MS. SARK:

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1 **Q. Okay. Do you have actual knowledge**

2 **as to who recorded the testimony of Jake**

3 **Wagner?**

4 A. I was out of the country. I wasn't

5 present for the recording.

6 **Q. That wasn't my question.**

7 **Do you have actual knowledge who**

8 **recorded the testimony of Jake Wagner?**

9 A. Again, with all respect, I was not

10 present for the recording, so I could not tell

11 you who was recording or not recording.

12 MS. SARK: Can we go off the record

13 for a minute?

14 (Off the record.)

15 MR. MEZIBOV: Your questions are

16 getting to an area which we may need to

17 invoke privilege. It's under Ohio

18 Revised Code 2739.2.

19 MS. SARK: Okay.

20 MR. MEZIBOV: That's the Shield Law.

21 MS. SARK: Okay.

22 MR. MEZIBOV: We don't have any

23 problems with the questions you've asked

24 to this point.

25 MS. SARK: Okay.

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1 MR. MEZIBOV: And he's told you he

2 has suspicions.

3 But what we're going to object to is

4 any question which is intended to or

5 seeks to unpack those suspicions.

6 MS. SARK: Okay.

7 MR. MEZIBOV: They're based on who

8 he may thinks.

9 MS. SARK: Yeah.

10 MR. MEZIBOV: So just please

11 understand that we would invoke that

12 privilege.

13 MS. SARK: That's fine.

14 MR. MEZIBOV: Okay.

15 MS. SARK: That's fine. Sounds

16 good.

17 BY MS. SARK:

18 **Q. Okay. So ask my question again.**

19 **Do you have actual knowledge as to**

20 **who recorded the testimony of Jake Wagner?**

21 A. I do not.

22 **Q. Okay. So your understanding was**

23 **that the recording was just left on your desk,**

24 **correct? The recording of Jake Wagner's**

25 **testimony was just left on your desk, correct?**

<p style="text-align: right;">Page 82</p> <p>1 A. That is correct.</p> <p>2 Q. Did this person reach out, prior to</p> <p>3 leaving the recording on your desk? Scratch</p> <p>4 that.</p> <p>5 Did this person contact you prior to</p> <p>6 leaving the recording on your desk?</p> <p>7 MR. MEZIBOV: You can answer that.</p> <p>8 A. You're assuming that I know the</p> <p>9 person.</p> <p>10 BY MS. SARK:</p> <p>11 Q. I'm -- I'm asking if anybody</p> <p>12 contacted you about the recording of Jake</p> <p>13 Wagner's testimony, prior to you receiving it.</p> <p>14 A. I was -- I was not contacted prior</p> <p>15 to. I walked in to my desk, and there it was.</p> <p>16 Q. Okay. So I am going to bring up</p> <p>17 what we will list as Exhibit 30.</p> <p>18 And I am going to play this in its</p> <p>19 entirety.</p> <p>20 (The video was played.)</p> <p>21 MR. MEZIBOV: How long is this?</p> <p>22 MS. SARK: It is 13 minutes,</p> <p>23 14 minutes. I'm asking questions</p> <p>24 throughout.</p> <p>25 MR. MEZIBOV: May we take a --</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 (The video was played.)</p> <p>4 BY MS. SARK:</p> <p>5 Q. So let's stop it right there.</p> <p>6 So you said, previously, nobody</p> <p>7 contacted you prior to providing the recording</p> <p>8 of Jake Wagner's testimony, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. So why did you say, in your</p> <p>11 interview, that you had an email from a source</p> <p>12 regarding Jake Wagner's testimony being</p> <p>13 recorded?</p> <p>14 A. I had just gotten in from -- another</p> <p>15 trip from Bogota. This -- I was actually in an</p> <p>16 Airbnb in Orlando. I had been up for several</p> <p>17 hours. As you can see, I was quite exhausted.</p> <p>18 So I don't recall. A lot of this</p> <p>19 interview there's projection and insinuations</p> <p>20 is that just simply are not factual to the</p> <p>21 facts of the actual proceedings and complaint</p> <p>22 in this case.</p> <p>23 Q. So you lied in the interview; is</p> <p>24 that correct?</p> <p>25 A. I didn't lie knowingly. It was a</p>
<p style="text-align: right;">Page 83</p> <p>1 MS. SARK: Yeah. Yeah, absolutely.</p> <p>2 MR. MEZIBOV: -- make a run?</p> <p>3 MS. SARK: Absolutely.</p> <p>4 MR. MEZIBOV: Thank you.</p> <p>5 (A recess was taken from 2:07 to 2:15.)</p> <p>6 BY MS. SARK:</p> <p>7 Q. I'm just going to play it for a</p> <p>8 couple minutes, then I'll ask some questions.</p> <p>9 (The video was played.)</p> <p>10 BY MS. SARK:</p> <p>11 Q. Do you recall this interview?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Who was this interview with?</p> <p>14 A. The Young Turks.</p> <p>15 Q. Which -- what is the Young Turks?</p> <p>16 A. It is a news organization.</p> <p>17 Q. Did they contact you about this</p> <p>18 interview?</p> <p>19 A. I have an existing relationship with</p> <p>20 this organization.</p> <p>21 I don't recall who contacted who,</p> <p>22 how it got on their radar, if I sent to them or</p> <p>23 what.</p> <p>24 Q. Okay. Did this interview occur</p> <p>25 after you voluntarily turned yourself in?</p>	<p style="text-align: right;">Page 85</p> <p>1 very heated live interview, which was very</p> <p>2 stressful. It was hard to remember and recall</p> <p>3 all the facts at the time.</p> <p>4 Q. So did you receive an email from an</p> <p>5 individual regarding the testimony of Jake</p> <p>6 Wagner?</p> <p>7 A. Upon reflection, no.</p> <p>8 Q. Let me -- let's look at Exhibit 27</p> <p>9 really quickly. And it will be Interrogatory</p> <p>10 Number 3 on page 3.</p> <p>11 And Interrogatory Number 3 says,</p> <p>12 State how the audio of Edward Jake Wagner's</p> <p>13 testimony was provided to you (via email, in</p> <p>14 person, etc.)</p> <p>15 Response: A copy of the audio was</p> <p>16 left on my desk while I was away.</p> <p>17 Is that a correct reading of</p> <p>18 Interrogatory Number 3 and your response?</p> <p>19 A. Yes. And the difference, Casey,</p> <p>20 between this interrogatory request for</p> <p>21 admissions and the audio that you're playing,</p> <p>22 is that the request for admissions is under</p> <p>23 oath, and I do not lie under oath. I would not</p> <p>24 lie under oath. Whereas, the audio was not</p> <p>25 under oath.</p>

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1 Q. But you still lied?

2 A. Not knowingly.

3 Q. Interrogatory Number 6, on the next

4 page, states, Provide the date you received the

5 recording, from an unidentified source, of

6 Edward Jake Wagner's testimony.

7 Your response: I found a copy of

8 the recording on my desk sometime between the

9 late evening of October 25th, 2022, and the

10 morning of October 26th, 2022.

11 Is that an accurate reading of

12 Interrogatory Number 6 and your response?

13 A. Yes.

14 Q. Do you know if -- tell me about how

15 you discovered the audio on your desk.

16 A. I walked in and there it sat.

17 Q. When you say there it sat, do you

18 mean a jump drive? Do you mean a CD?

19 A. What we would know as a jump drive

20 or a flash drive.

21 Q. Does your office have cameras?

22 A. At that time, no.

23 Q. So how did that person get into your

24 office to leave the audio recording?

25 A. I don't know. I was out of the

Page 87

1 country.

2 Q. Does your desk have your name on it?

3 A. I can't recall if I had a nameplate

4 at the time or not.

5 Q. So you don't know how that person

6 just found your desk and put the audio

7 recording on it, correct?

8 A. I am unaware if the person knew

9 whose desk it was or wasn't. Like I said, I

10 wasn't privy to the placement of it.

11 Q. Did you have exterior cameras --

12 A. No.

13 Q. -- at that time?

14 A. No, we did not.

15 Q. And you weren't present at your

16 office when this person dropped off the audio

17 recording, correct?

18 A. That is correct.

19 Q. Did you ever ask anyone to record

20 the testimony of Jacob Edward Wagner?

21 A. No.

22 Q. Did you ever tell anyone you would

23 compensate them with money or any other

24 incentive to record the testimony of Jacob

25 Edward Wagner?

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1 A. No.

2 Q. Okay. Let's -- are you fine if

3 we -- well, let's play a little bit more, and

4 then we'll --

5 (The video was played.)

6 BY MS. SARK:

7 Q. Okay. So I'm going to fast-forward

8 this a little bit, unless you want to play it

9 in its entirety, Mr. Myers.

10 A. I'm sorry. What is the question?

11 Q. Are you fine if we forward through

12 this, or would you like to play it in its

13 entirety?

14 MR. MEZIBOV: Just forward what you

15 want to ask questions.

16 MS. SARK: Okay.

17 MR. MEZIBOV: Then we can have it

18 played back.

19 MS. SARK: Okay.

20 BY MS. SARK:

21 Q. I don't have my glasses on, so I

22 need to scooch it over.

23 (The video was played.)

24 BY MS. SARK:

25 Q. Okay. You said the person who

Page 89

1 recorded this was not a journalist; is that

2 accurate?

3 A. Yes.

4 Q. And let's go back to Exhibit 29, the

5 article you wrote in the Scioto Valley

6 Guardian. And it's the third paragraph on the

7 second page.

8 The Guardian received a portion of

9 Jake Wagner's testimony on his first day on the

10 witness stand.

11 That second sentence states, The

12 Guardian wants to disclose that the audio was

13 not recorded by a member of the media and was

14 submitted to the Guardian's newsroom by a

15 courthouse source who's authorized to have

16 their cell phone in the room; is that accurate?

17 MR. ROBINSON: Objection to form.

18 BY MS. SARK:

19 Q. Is that what the second sentence in

20 the third paragraph reads for Exhibit 29?

21 A. That is what it reads.

22 Q. Okay. So if you -- strike that.

23 Your testimony today is that you do

24 not have actual knowledge as to who recorded

25 the testimony of Jacob Edward Wagner; is that

Page 90

1 correct?

2 A. That's correct.

3 Q. So then how can you explain that in

4 your article you stated that the individual is

5 not a member of the media and was authorized to

6 have their cell phone in the courtroom?

7 A. Members of the news media were not

8 authorized to have their cell phones in the

9 courtroom.

10 So speaking on behalf of the ethics

11 of all journalists nationwide, I can state that

12 none of us would violate the code or the order

13 of the judge, knowingly.

14 Therefore, I had worked alongside

15 these people for six weeks; some of them I had

16 known for many years.

17 Q. But you took your cell phone into

18 the courtroom, right?

19 A. When?

20 Q. During the incident with Jason

21 Frazier?

22 A. In the acting capacity of the pool

23 reporter, that is correct.

24 Q. So you didn't know, for a fact, when

25 you published this article, that the person who

Page 91

1 recorded this was not a member of the media,

2 did you?

3 A. Can you restate your question,

4 please?

5 Q. Sure.

6 Your testimony today is that you do

7 not have any actual knowledge as to who

8 recorded the testimony of Jake Wagner, correct?

9 A. That's correct.

10 Q. So you can't say that this

11 individual was not a member of the media, can

12 you?

13 A. I felt comfortable in my recording

14 to say that no member of the news media -- that

15 I had worked alongside my colleagues long

16 enough to know that none of us would ethically

17 violate the order or any ethics or Court order.

18 So I felt comfortable putting that

19 in my article, and I feel comfortable saying

20 that today.

21 The journalists I worked with are

22 respectable, reputable journalists. Some of

23 them have very high accolades and awards and

24 have been in this industry for a very long

25 time.

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1 I have no reason to believe, for a

2 single second, that any of them, including

3 myself, would violate the Court order.

4 Q. Were -- was the general public

5 permitted to have their cell phones in the

6 courtroom?

7 A. I'm not sure. I know some of the

8 family members and the victims' advocate had

9 their phones.

10 Q. In this article, you also say that

11 you -- the recording of Jake Wagner's testimony

12 was submitted by a courthouse source who was

13 authorized to have their cell phone in the

14 room, correct?

15 A. That is what it reads, yes.

16 Q. So if you don't know who recorded

17 the testimony of Jake Wagner, how can you

18 affirmatively say that it was a courthouse

19 source authorized to have their cell phone in

20 the courtroom?

21 A. As I previously stated, we have

22 audio from the testimony --

23 Q. Uh-huh.

24 A. -- that was clearly recorded from

25 within the courtroom. And I felt it was

Page 93

1 appropriate, and confident in my reporting,

2 when I authored this article known as

3 Exhibit 29, that it was not a member of the

4 news media, because these are people who I know

5 quite well, and none of us would smuggle an

6 audio recording device in.

7 Therefore, it only left a courtroom

8 source who was authorized to have their cell

9 phone in the room.

10 Q. But couldn't it have been someone in

11 the general public that recorded the testimony

12 of Jake Wagner?

13 MR. MEZIBOV: Objection.

14 Calls for speculation.

15 BY MS. SARK:

16 Q. Do you need me to repeat the

17 question?

18 A. No. I'm just thinking how to phrase

19 the answer here.

20 Courthouse source does not

21 necessarily mean an employee of the government.

22 A courthouse source could very well mean

23 anybody within the confines of the building.

24 Q. Well, who was authorized to have

25 their cell phone in the courtroom during

Page 94

1 testimony?

2 A. I don't have a full list nor do I

3 know. But as I mentioned, I saw several

4 people, including the general public, defense

5 attorneys, police officers, victims' advocates,

6 and members of the family.

7 Q. So you don't know who was permitted

8 to have their cell phone in the courtroom

9 during testimony?

10 A. We know what the order states, is

11 that the media was not allowed.

12 Q. And my question is: How can you

13 affirmatively state, then, in your article,

14 that the source who provided the recording was

15 authorized to have their cell phone in the

16 courtroom?

17 MR. ROBINSON: I don't know if this

18 helps. It says, it was submitted to the

19 Guardian by a courthouse source.

20 MS. SARK: Right.

21 MR. ROBINSON: Not that it was

22 recorded by a courthouse source.

23 MS. SARK: Okay.

24 THE WITNESS: That's what I was

25 trying to say. I was waiting for her to

Page 95

1 lay the foundation, but thank you.

2 BY MS. SARK:

3 Q. So is the person who submitted the

4 recording different from the person who

5 recorded Jake Wagner's testimony?

6 MR. MEZIBOV: To your knowledge. If

7 you know.

8 A. I don't know.

9 BY MS. SARK:

10 Q. And then my question goes back to,

11 if you don't know who -- scratch that.

12 You don't know who recorded the

13 testimony of Jake Wagner, correct?

14 A. I have my speculations.

15 Q. Okay. You don't know who

16 recorded -- who submitted the recording of Jake

17 Wagner's testimony, correct?

18 MR. ROBINSON: You can answer.

19 A. Can you ask the question again,

20 please?

21 BY MS. SARK:

22 Q. You don't know who recorded the

23 testimony of Jake Wagner, correct?

24 A. That is correct.

25 Q. You don't know who submitted the

Page 96

1 recording of Jake Wagner, assuming that they

2 are two separate people, correct?

3 A. I had my suspicions, but if I did

4 know, I could not tell you.

5 Q. Okay. Do you suspect that the same

6 person recorded and submitted the testimony of

7 Jake Wagner?

8 A. I can't speculate one way or the

9 other.

10 Q. Then how can you affirmatively say

11 in your article that the person who submitted

12 the recording of Jake Wagner was authorized to

13 have their cell phone in the courtroom?

14 MR. MEZIBOV: Let me object again,

15 and I'm going to go back to what my

16 statement was earlier.

17 We believe that under the statute

18 that we cited, the Ohio Shield Law, that

19 Mr. Myers is privileged not to answer

20 questions that may lead to a chain of

21 evidence producing the source.

22 MS. SARK: Yes. And I understand

23 that. But he is claiming he doesn't even

24 know the source.

25 So my question is, then, how can you

Page 97

1 affirmatively say in your article that

2 you know it is someone who is authorized

3 to have their cell phone if you don't

4 know who the source is.

5 MR. MEZIBOV: Well, I think he's --

6 I understand your question, but I think

7 he's answered it.

8 He answered it by saying, I have

9 eliminated, in my mind, the entirety of

10 the journalists who were reporting on

11 this case.

12 So that would have left somebody

13 else in that courtroom who was permitted

14 to bring a cell phone in, but he did not

15 know who it was.

16 And he did not know whether it was a

17 member of the public or somebody else who

18 wasn't a journalist.

19 So I think he was just trying to --

20 that's his testimony -- limit the scope

21 of the universe that might have been the

22 source.

23 BY MS. SARK:

24 Q. So let me ask this.

25 Was the general public permitted to

<p style="text-align: right;">Page 98</p> <p>1 have their cell phones?</p> <p>2 A. I don't know. I saw members of the</p> <p>3 general public have their cell phones, yes.</p> <p>4 Q. Who was authorized, to your</p> <p>5 knowledge, to have their cell phones?</p> <p>6 A. I would not know. I saw several</p> <p>7 people have their cell phones. If they were</p> <p>8 authorized or not authorized, I'm unsure.</p> <p>9 To the best of my knowledge, it was</p> <p>10 law enforcement officials, attorneys, the</p> <p>11 victim witness, the court reporter, the court</p> <p>12 producer for Court TV, who had been absent at</p> <p>13 this time, and I'm not sure who else.</p> <p>14 Q. So when you published this article,</p> <p>15 you really didn't know if the person who</p> <p>16 submitted the testimony of Jake Wagner was</p> <p>17 authorized to have their cell phone in the</p> <p>18 courtroom?</p> <p>19 MR. MEZIBOV: Objection, subject to</p> <p>20 my previous comments.</p> <p>21 But you can answer.</p> <p>22 A. Again, it's speculation, and I have</p> <p>23 my ideas of who the source was, but if I did</p> <p>24 know, I couldn't tell you.</p> <p>25 BY MS. SARK:</p>	<p style="text-align: right;">Page 100</p> <p>1 to answer my questions.</p> <p>2 And so I'm answering my questions</p> <p>3 the way that I'm answering them and that is how</p> <p>4 I have answered them, and that is how I'm going</p> <p>5 to continue to answer them.</p> <p>6 Q. So you don't know who submitted the</p> <p>7 recording of Jake Wagner's testimony?</p> <p>8 MR. MEZIBOV: Objection.</p> <p>9 Asked and answered.</p> <p>10 A. I have my projections and beliefs,</p> <p>11 but I could not tell you if I did know.</p> <p>12 BY MS. SARK:</p> <p>13 Q. And you do not know who was</p> <p>14 authorized to have their cell phone in the</p> <p>15 courtroom, correct?</p> <p>16 A. As previously stated, I named a</p> <p>17 series of people who had their phones in the</p> <p>18 courtroom.</p> <p>19 (The video was played.)</p> <p>20 BY MS. SARK:</p> <p>21 Q. I think I'm done on that one.</p> <p>22 Okay. Let's move on to your cell</p> <p>23 phone.</p> <p>24 You claim that your cell phone was</p> <p>25 illegally searched and seized in this matter,</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So you made this affirmative</p> <p>2 statement, that the audio was not recorded by a</p> <p>3 member of the media and was submitted to the</p> <p>4 Guardian's newsroom by a courthouse source who</p> <p>5 is authorized to have their cell phone in the</p> <p>6 room, just based on your assumptions, correct?</p> <p>7 A. I have full confidence in my</p> <p>8 colleagues that they would not violate the</p> <p>9 Court order. And, therefore, that's why I</p> <p>10 wrote, no member of the media recorded it.</p> <p>11 As for who submitted it to the</p> <p>12 newsroom was by a courthouse source, it was</p> <p>13 clearly somebody who was within the courthouse</p> <p>14 that had access to it. If they are one and the</p> <p>15 same --</p> <p>16 Q. But this statement was just based on</p> <p>17 your assumptions, correct?</p> <p>18 A. Again, I think I've answered your</p> <p>19 question. I can answer and rephrase it</p> <p>20 20 different ways.</p> <p>21 Q. I'm just looking for a yes or no.</p> <p>22 Was this statement based on your</p> <p>23 assumptions?</p> <p>24 A. Well, I get that you're looking for</p> <p>25 a yes or no, but you don't get to tell me how</p>	<p style="text-align: right;">Page 101</p> <p>1 correct?</p> <p>2 A. It was illegally seized, that is</p> <p>3 correct.</p> <p>4 Q. And when did the illegal -- illegal</p> <p>5 seizure occur?</p> <p>6 A. It was, I believe, around the -- let</p> <p>7 me -- without giving a date, because I don't</p> <p>8 want to misstate, it was the day of my</p> <p>9 arraignment in the county court, or what most</p> <p>10 counties would call their municipal court. I</p> <p>11 believe it may have been November 2nd.</p> <p>12 Q. Do you recall where this happened?</p> <p>13 A. The seizure?</p> <p>14 Q. Yes.</p> <p>15 A. Yes. It happened at the</p> <p>16 magnetometer in the lobby of the Pike County</p> <p>17 Courthouse.</p> <p>18 Q. Okay. And before you went</p> <p>19 through -- we'll call it the metal detector.</p> <p>20 Before you went through the metal detector, did</p> <p>21 you have to take things out of your pockets?</p> <p>22 A. Yes.</p> <p>23 Q. What did you have to take out of</p> <p>24 your pockets?</p> <p>25 A. I emptied everything out of my</p>

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1 pockets. I don't know what they would expect
 2 you to take out, but I always took out
 3 everything.
 4 **Q. Okay. Did you take out your cell**
 5 **phone?**
 6 A. Yes.
 7 **Q. And where did you place your cell**
 8 **phone?**
 9 A. There was a video of it. I don't
 10 recall. They had bins. It probably had gone
 11 into a bin or it might have laid directly on
 12 the conveyor belt. I don't recall.
 13 **Q. Okay. And then walk me through what**
 14 **happened after your cell phone either was just**
 15 **in a bin or went through the conveyor belt.**
 16 A. Yeah. So there was a man by the
 17 name of Captain Burchett sitting at the desk,
 18 manning the security desk that day.
 19 Mr. Burchett has -- I'm picking up
 20 my items, I believe, from the conveyor belt or
 21 from the dish or whatever, and -- or perhaps he
 22 had it in his hand. I can't recall.
 23 But some statements were made. And
 24 I'm paraphrasing here, but the statements were
 25 made, you need to take that back outside, by

Page 103

1 Mr. Burchett.
 2 And I said, I'm going down to the
 3 media room, not upstairs.
 4 And he says, no. You need to take
 5 it back outside.
 6 And I said, again, I'm going to the
 7 media room where we're allowed to have our
 8 phones.
 9 And he said, on second thought, I
 10 think I have a search warrant for this. And he
 11 placed it behind him.
 12 And I proceeded to go to the media
 13 room without my cell phone.
 14 **Q. After your phone went through the**
 15 **conveyor belt, did you ever put it back on your**
 16 **person?**
 17 A. I can't recall. Like I said, we
 18 have CCTV video of that. If you want to play
 19 it to refresh my memory, that would help.
 20 **Q. Yeah. We'll play that. We will**
 21 **label this next one as Exhibit 31.**
 22 (The video was played.)
 23 BY MS. SARK:
 24 **Q. So you're seen there emptying out**
 25 **your pockets, correct?**

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1 A. That's correct. I would have taken
 2 everything out.
 3 **Q. And you go through the metal**
 4 **detector, correct?**
 5 A. Yeah. My belt is what led the metal
 6 detector to go off.
 7 **Q. I don't judge. My high heels do it**
 8 **every time, too.**
 9 A. You see there, Mr. Burchett hands me
 10 everything.
 11 **Q. Let me pause it.**
 12 **Is that your cell phone that he**
 13 **places behind him?**
 14 A. Correct.
 15 **Q. Okay. So after it went through the**
 16 **conveyor belt, you were talking to Captain**
 17 **Burchett, and he puts your cell phone behind**
 18 **him, correct?**
 19 A. Yeah. Our dialogue back and forth,
 20 as I was paraphrasing, was he needs -- he says
 21 to me, you need to take it back outside.
 22 And I said, I'm going down to the
 23 media room. We're obviously permitted to have
 24 our cell phones.
 25 **Q. Uh-huh.**

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1 A. And I reiterated that twice, I
 2 believe.
 3 And then he said, on second thought,
 4 I think I have a search warrant for this. And
 5 he placed it behind him.
 6 **Q. Okay.**
 7 A. So the -- the brief exchange that
 8 you cannot hear but that you see occurring, is
 9 that of what I just stated.
 10 MS. SARK: Let me just look over
 11 some notes really quickly. We're almost
 12 done. I probably have less than
 13 five minutes left.
 14 So we'll just go off the record.
 15 (A recess was taken from 2:46 to 2:47.)
 16 BY MS. SARK:
 17 **Q. Okay. Let's go back to Exhibit --**
 18 **I'm sorry -- Exhibit 27. And it is**
 19 **Interrogatory Number 4 on page 3.**
 20 And it states, Interrogatory Number
 21 4: The Complaint, in footnote 2, claims that
 22 you believe and therefore aver that the county
 23 prosecutor represented to a third party on the
 24 date of the dismissal that he was not in favor
 25 of the criminal prosecution against you and you

<p style="text-align: right;">Page 106</p> <p>1 had no intention of further pursuing the</p> <p>2 matter. Please provide the name of the</p> <p>3 individuals you obtained this information from.</p> <p>4 Your response, Deborah Barrington.</p> <p>5 Is that an accurate reading of</p> <p>6 Interrogatory Number 4 in your response?</p> <p>7 A. Correct.</p> <p>8 Q. Who is Deborah Barrington?</p> <p>9 A. Deborah Barrington was part of my</p> <p>10 defense team that we called the dream team.</p> <p>11 She was stand-in counsel.</p> <p>12 Obviously, these proceedings move</p> <p>13 very fast when one is arrested, and the</p> <p>14 arraignment happened fairly quickly.</p> <p>15 Ms. Barrington is of local counsel</p> <p>16 in Chillicothe, which is about 15 minutes north</p> <p>17 of Pike County, where my arraignment was</p> <p>18 supposed to be held.</p> <p>19 None of my members of my team were</p> <p>20 privy to have availability on their schedule to</p> <p>21 attend the arraignment, which was within a</p> <p>22 couple of days, if not, I think, the next day,</p> <p>23 couple of days after my surrender.</p> <p>24 So it was recommended that we find</p> <p>25 local counsel to act as stand-in counsel.</p>	<p style="text-align: right;">Page 108</p> <p>1 the felony trial is taking place in the common</p> <p>2 pleas.</p> <p>3 So I leave the county court, and I</p> <p>4 go down to the county courthouse to resume my</p> <p>5 reporting of the news trial. And specifically</p> <p>6 to ask for my laptop, because it was no longer</p> <p>7 online at that time. And I had not been served</p> <p>8 a copy of a receipt of a search warrant, so I</p> <p>9 was unaware that it had been seized.</p> <p>10 The cell phone was seized by</p> <p>11 Mr. Burchett. And it was quite an ordeal, a</p> <p>12 very traumatizing experience to get a</p> <p>13 replacement cell phone through my phone carrier</p> <p>14 and have my number ported over.</p> <p>15 So for a number of days after the</p> <p>16 cell phone seizure, I was operating on a</p> <p>17 brand-new phone that I had to purchase from my</p> <p>18 phone carrier on a temporary phone number.</p> <p>19 Eventually, after much headache and</p> <p>20 explaining to the phone carrier what had</p> <p>21 happened, they were able to port my cell phone</p> <p>22 number from the seized device into the new</p> <p>23 device.</p> <p>24 Once that happened, my phone started</p> <p>25 to populate with numerous text messages from</p>
<p style="text-align: right;">Page 107</p> <p>1 Ms. Barrington came with high recommendation,</p> <p>2 and she stood in as local counsel. And she</p> <p>3 joined our team at that moment.</p> <p>4 Q. Okay. So who do you believe -- and</p> <p>5 I mispronounced her name. I apologize.</p> <p>6 A. No, that's okay.</p> <p>7 Q. Who do you believe Deborah spoke</p> <p>8 with regarding your criminal prosecution?</p> <p>9 A. Ms. Barrington told me that she</p> <p>10 spoke with, at the time, Assistant Attorney --</p> <p>11 Prosecuting Attorney Mike Davis.</p> <p>12 Q. And what did she tell you -- strike</p> <p>13 that.</p> <p>14 Can you paraphrase the conversation</p> <p>15 that she stated to you she had with the</p> <p>16 assistant prosecutor?</p> <p>17 A. Certainly. So the cell phone had</p> <p>18 been seized by Captain Burchett --</p> <p>19 Q. Uh-huh.</p> <p>20 A. -- shortly after my arraignment.</p> <p>21 Two different buildings, of course. So we got</p> <p>22 the -- the arraignment happening down in county</p> <p>23 court, which is in a separate building in</p> <p>24 downtown, and then we've got the courthouse,</p> <p>25 which is where the federal -- or, excuse me --</p>	<p style="text-align: right;">Page 109</p> <p>1 various individuals. One of those individuals</p> <p>2 in text message was Ms. Barrington, who said, I</p> <p>3 have some news. Give me a call.</p> <p>4 I called her. Of course, this is</p> <p>5 two -- I'd say about two to three weeks later</p> <p>6 after the arraignment and the seizure of the</p> <p>7 cell phone. And she says, oh, I just wanted to</p> <p>8 let you know -- and I'm paraphrasing. I just</p> <p>9 want to let you know I spoke to Mr. Davis, who</p> <p>10 is the assistant prosecuting attorney in your</p> <p>11 case. He's heir apparent to become prosecutor</p> <p>12 in January.</p> <p>13 He pulled me aside during the</p> <p>14 arraignment -- after the arraignment, after you</p> <p>15 left, and said that he has no intention on</p> <p>16 pursuing this charge to the grand jury when he</p> <p>17 takes office in January.</p> <p>18 Q. But he was not the county prosecutor</p> <p>19 at the time of that conversation, correct?</p> <p>20 A. That's correct. He was the</p> <p>21 assistant prosecuting attorney and heir</p> <p>22 apparent to the position.</p> <p>23 He was charged with the criminal</p> <p>24 prosecution of cases within the county court,</p> <p>25 which is where the arrangement took place. And</p>

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1 that is why he was present that day on behalf
 2 of the prosecutor's office.

3 **Q. Going back to your earlier**
 4 **testimony, you stated that the recordings of**
 5 **Jake Wagner, the two day -- two days of the**
 6 **recordings, were on a laptop that has since**
 7 **broke, correct?**

8 A. Yes, that's what I said.

9 **Q. So in October of 2022, did you have**
 10 **two separate laptops?**

11 A. October of 2022? Was that the same
 12 month of the trial? I'm sorry.

13 **Q. That was the month of Jake Wagner's**
 14 **testimony.**

15 A. Yeah. So the company and myself had
 16 various laptops. I, personally, had my laptop.
 17 We had a laptop that we were leasing
 18 for the purposes of the trial only, because we
 19 didn't want to expend several thousand dollars
 20 to purchase a laptop.

21 So for the purposes of the trial, it
 22 was much more affordable for us to pay -- I
 23 think it was like 15 bucks or something a week
 24 for the purpose of the trial, with the intent
 25 to return the laptop at the end of the trial.

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1 So we were just leasing a laptop. And then I
 2 had my laptop.

3 My associate editor had his laptop.
 4 My sales representative had her laptop. And
 5 then I imagine we probably had an extra laptop
 6 or two around the office, as we normally do.

7 **Q. So the laptop that was seized was**
 8 **the one that you were renting for approximately**
 9 **15 bucks a week, correct?**

10 A. Yeah. And, again, the purpose was,
 11 we needed -- I could not always be present at
 12 the courthouse for things. I would either need
 13 to step out to the bathroom or go run an errand
 14 or something.

15 I took this case very personal, the
 16 case of -- the Wagner case, because I had been
 17 following it from the very first day that it
 18 happened.

19 I wanted to be present for the
 20 trial. I didn't want to hire outside help to
 21 come in. I wanted to be a part of this very
 22 historic trial. So I made the decision to task
 23 myself with being the person who would be
 24 present.

25 But I could not tie up my laptop,

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1 because I would need my laptop after hours to
 2 conduct my personal business, to conduct work
 3 after hours.

4 The way that our systems were set up
 5 within the media room, it just was not
 6 conducive to unplug everything.

7 So I made the decision to -- we
 8 could either purchase a MacBook laptop in the
 9 range of 2-, \$3,000, or we could lease one for
 10 a few weeks.

11 **Q. And that was leased through**
 12 **RENT-2-OWN, correct?**

13 A. That's correct. So I made the
 14 decision, instead of dropping \$3,000, that we
 15 would expend a few hundred dollars and lease
 16 the laptop for the purposes of the trial.

17 And we -- I made that decision. And
 18 that laptop was placed in the media room to be,
 19 what we'll call, master control of the feed
 20 that would then feed to the internet and to the
 21 viewers back home on social media. And that
 22 was the laptop that was seized.

23 **Q. The recordings of Jake Wagner's**
 24 **testimony that you received were only uploaded**
 25 **to your personal laptop, correct?**

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1 A. It -- you know, personal, company
 2 laptop, whichever you want to label it as, it
 3 was one and the same. I used it for work.

4 I would, you know -- who owned
 5 possession of the laptop would be up for
 6 debate.

7 **Q. It was not the laptop that you were**
 8 **using that was being rented through RENT-2-OWN?**

9 A. That is correct.

10 **Q. Okay.**

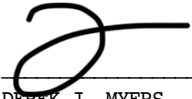
11 A. We needed a second computer. I
 12 needed access to my primary computer. And then
 13 we also needed to have a stationary computer
 14 for the feed.

15 **Q. When you published the article on**
 16 **Scioto Valley Guardian's website and Scioto**
 17 **Valley Guardian's Facebook page, did you upload**
 18 **that from the computer that was being rented or**
 19 **the other computer, be it your personal or**
 20 **company laptop?**

21 A. Probably -- I don't recall.

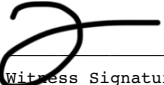
22 **Q. Okay. You knew, when you received**
 23 **the recording of Jake Wagner's testimony, that**
 24 **he had opted out of being filmed, recorded,**
 25 **videotaped, and photographed, correct?**

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1 A. I believe I've already answered
 2 that, but yes.
 3 Q. And you knew when you published the
 4 recording, that Jake Wagner had opted out of
 5 being filmed, recorded, videotaped, and
 6 photographed, correct?
 7 A. That is correct.
 8 Q. And you published that recording
 9 anyway, correct?
 10 A. Under the Privacy Protection Act, I
 11 was allowed to do so, and I did so.
 12 MS. SARK: I have no further
 13 questions.
 14 MR. ROBINSON: We'll read.
 15 MS. SARK: And I'll go ahead and
 16 order the transcript.
 17
 18 
 19 _____
 20 DEREK J. MYERS
 21 - - -
 22 DEPOSITION ADJOURNED AT 2:58 P.M.
 23 - - -
 24
 25


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E R R A T A S H E E T
 DEPOSITION OF: DEREK J. MYERS
 TAKEN: SEPTEMBER 18, 2024

1
 2
 3
 4 Please make the following corrections to my
 transcript:
 5
 6 Page Line Number Correction Made
 7
 8 **None**
 9
 10
 11
 12
 13
 14
 15
 16
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 18
 19
 20
 21
 22
 23
 24
 25  10/7/24
 Witness Signature Date

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C E R T I F I C A T E

1
 2
 3 STATE OF OHIO :
 : SS
 4 COUNTY OF HAMILTON :
 5
 6 I, Tracy L. Allen, RPR, RMR, the
 7 undersigned, a duly qualified and commissioned
 8 notary public within and for the State of Ohio,
 9 do certify that before the giving of his
 10 deposition, DEREK J. MYERS was by me first duly
 11 sworn to depose the truth, the whole truth and
 12 nothing but the truth; that the foregoing is
 13 the deposition given at said time and place by
 14 DEREK J. MYERS; that I am neither a relative of
 15 nor employee of any of the parties or their
 16 counsel, and have no interest whatever in the
 17 result of the action.
 18 IN WITNESS WHEREOF, I hereunto set my
 19 hand and official seal of office at Cincinnati,
 20 Ohio, this 1st day of October 2024.
 21
 22 
 23 _____
 Tracy L. Allen, RPR, RMR
 Notary Public - State of Ohio
 My commission expires July 29, 2028.
 24
 25